



FORSHAW GAULD
ENGINEERS

FORSHAW GAULD ENGINEERS LTD

TERMS AND CONDITIONS

1 DEFINITIONS

- 1.1 FORSHAW GAULD: Forshaw Gauld Engineers Ltd | Company No. SC718529 | Registered address: 88 Constitution Street, Edinburgh, EH6 6RP
- 1.2 Client: That person, persons or party appointing FORSHAW GAULD to undertake the Services.
- 1.3 Services: Those services that FORSHAW GAULD undertakes to perform in relation to the Project as set out in the Fee Proposal.
- 1.4 Fee Proposal: The document that defines the Services that FORSHAW GAULD will undertake in relation to the Project and the Fee that will be due from the Client in return.
- 1.5 Fee: The amount, or basis for calculating the amount, set out in the Fee Proposal that the Client agrees to pay FORSHAW GAULD for undertaking the Services in relation to the Project. Disbursements, where charged, form part of the Fee.
- 1.6 Project: The total of the works that the Services relate to.
- 1.7 Responsibilities: The responsibilities of FORSHAW GAULD and of the Client as defined in sections 2 and 3 of these terms and conditions respectively.

2 FORSHAW GAULD'S RESPONSIBILITIES

- 2.1 FORSHAW GAULD are contracted to produce such design documents as may be necessary to satisfy Building Control of the structural or civil engineering Building Regulations and to form a specification of the structural or civil works for a professional and experienced Builder or Contractor. The design documents will address only those design items identified in the fee proposal or other contract documentation.
- 2.2 The design documents should be used only by a professional Builder or Contractor experienced in the kind of work in question and are not intended for and should not be used by laymen or similarly inexperienced parties.
- 2.3 FORSHAW GAULD is not responsible for the supervision of the Builder or Contractor or for providing advice on on-site activities generally unless agreed otherwise in advance.
- 2.4 Unless specifically agreed otherwise, in writing, the design documents will only address the permanent structural or civil works and not any temporary works that may be necessary for the construction of the permanent works. The responsibility of FORSHAW GAULD under the CDM 2015 regulations are unaffected by this.



FORSHAW GAULD
ENGINEERS

- 2.5 The design documents are not specifically intended for use in negotiations relating to the Party Wall etc. Act 1996 or utility companies notices although they may prove useful for such purposes.
- 2.6 Stability during the temporary construction stage remains the responsibility of the Builder or Contractor who must satisfy themselves that they are suitably experienced in this type of work or else seek further advice.
- 2.7 The design documents produced by FORSHAW GAULD are prepared in good faith with reasonable skill and care as may be expected of a structural and/or civil engineer and based on certain assumptions which in turn must be verified on site before work commences or materials are ordered. It is the Builder's or Contractor's responsibility to ensure that the assumptions made in the design documents accurately reflect the actual site conditions and to notify the Client or FORSHAW GAULD if their preliminary, or later, investigations reveal otherwise.
- 2.8 If defects in, or features of, existing structures are revealed during the works that may affect the integrity of the permanent works design the Builder or Contractor must notify FORSHAW GAULD.
- 2.9 Although FORSHAW GAULD may visit the site before producing the design documents, this should not be assumed to be a comprehensive defect survey unless confirmed otherwise in writing in advance. Regardless of the status of any site visit, it must be acknowledged that defects may be concealed.
- 2.10 If at any stage, any doubt exists, then the Builder or Contractor must seek advice from Forshaw Gauld Engineers or an appropriate specialist body.

3 CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall give, and shall ensure that their agents give, such assistance as shall reasonably be required by FORSHAW GAULD in the performance of their responsibilities.
- 3.2 The Client shall ensure that their decisions, instructions, consents or approvals on or to all matters properly referred to them shall be given in such reasonable time so as not to delay or disrupt the performance of FORSHAW GAULD in their responsibilities.
- 3.3 The Client shall appoint a professional and experienced Builder or Contractor to execute and/or manage the execution of the Project and ensure they do so in accordance with the terms of the relevant contracts. Periodic visits by FORSHAW GAULD to the site shall in no way affect the responsibilities of the Builder or Contractor or any sub-Contractors for constructing the Project in compliance with the relevant contract documents and any instructions issued by FORSHAW GAULD or the Client.

4 PAYMENT OF FEES

- 4.1 The agreed Fee is set out in the fee proposal or other contract documentation and applies only to the scope for structural design work set out in the same documentation. The Fee excludes disbursements and VAT.
- 4.2 While the design documents may prove useful for other purposes (e.g.: negotiations relating to the Party Wall etc. Act 1996 or utility company notices), additional work for such purposes will incur an additional fee, to be agreed between the client and Forshaw Gauld Engineers prior to commencing.
- 4.3 The Fee will be payable as a single payment on submission of the design drawings, or as multiple payments invoiced throughout stages of the Project, or invoiced monthly as appropriate. The due date for payment will be the date on the invoice as received by the Client.
- 4.4 The final date for payment of the Fee will be 14 days after the invoice date.
- 4.5 FORSHAW GAULD reserves the right, without penalty, to discontinue services in the event of non-payment of Fees.
- 4.6 If the Client intends to withhold any amount of the Fee, then the Client must give written notice to FORSHAW GAULD not later than one working day prior to the final date for payment of the Fee specifying any amount proposed to be withheld and the ground or grounds for withholding such amount.
- 4.7 Subject to Clause 4.8, the Client may at any time issue written instructions to FORSHAW GAULD for the variation of the scope of work and where reasonable, FORSHAW GAULD will comply with such instructions. Failing agreement on any consequent variation of the Fee, the Fee shall be based on FORSHAW GAULD's standard hourly rates.
- 4.8 If FORSHAW GAULD considers that an instruction by the Client under clause 4.7 would require an increase in the Fee, then prior to complying with the instruction (save in the case of emergency instructions which require immediate action) FORSHAW GAULD will so notify the Client and FORSHAW GAULD will provide to the Client an estimate of the increase in the Fee. Following notification by FORSHAW GAULD, the Client may either withdraw the instruction or instruct FORSHAW GAULD to comply with it and such instruction will be taken as an agreement of the estimate provided by FORSHAW GAULD.



FORSHAW GAULD
ENGINEERS

- 4.9 FORSHAW GAULD understand and 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 agreed terms. In the event of late payment of the Fee or any part of the Fee, FORSHAW GAULD reserve the right to charge a lump sum in accordance with Table 1 and levy interest on the outstanding amount at a rate 8% above the Bank of England base rate.

Table 1

Amount outstanding:	Charge:
Up to £999.99	£40.00
£1,000.00 to £9,999.99	£70.00
£10,000.00 or more	£100.00

5 DISBURSEMENTS

- 5.1 FORSHAW GAULD reserve the right to recover from the Client, expenses incurred in the course of undertaking the agreed services. These disbursements will be added to the Fee and be treated as part of the Fee.
- 5.2 Travel expenses will be charged at cost.
- 5.3 Copying, printing and binding costs are excluded unless otherwise agreed.
- 5.4 Other expenses will be charged at cost plus 15%.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Copyright and registered and unregistered design right and all intellectual property right in all drawings, details, plans and other documents of any nature whatsoever and any designs contained in them which have been or are hereafter provided by FORSHAW GAULD in the course of performing their Responsibilities ("Documents") will remain vested in FORSHAW GAULD. On full payment of the Fee, FORSHAW GAULD grants to the Client and the Client only a royalty-free exclusive licence to use and to reproduce all Documents only for purposes connected with the Project and the Project only (including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project). This licence does not include a right to reproduce the design contained therein nor in anyway use the design in relation to activities not concerned with the Project. Such licence does not carry the right to grant sub-licences and neither is it transferable to third parties without written agreement from FORSHAW GAULD and the identification of such third parties. In the event of the Client being in default of payment of any part of the Fee or other amounts properly due then the licence so granted is automatically revoked.



FORSHAW GAULD
ENGINEERS

- 6.2 FORSHAW GAULD will not be liable for any use by any person of the Documents for any purposes other than that for which they were originally provided by FORSHAW GAULD.
- 6.3 FORSHAW GAULD have the right to use drawings and final photographs / testimonials in their company publicity, marketing, industry submissions and on their website if no address, location or Client can be recognised.
- 6.4 Forshaw Gauld Engineers will comply with current legislation with regards to GDPR and Data Protection, Data Sharing and Privacy issues. Copies of their policies are available on request.

7 COMMENCEMENT AND TERMINATION

- 7.1 The effective date of the appointment of FORSHAW GAULD shall be the date upon which first instruction was received by FORSHAW GAULD or the date when FORSHAW GAULD shall have first commenced performance of the Services, whichever is earlier. Unless terminated, the appointment of FORSHAW GAULD shall be concluded when FORSHAW GAULD has performed the Services and all outstanding fees have been settled.
- 7.2 The Client may terminate the appointment of FORSHAW GAULD at any time by four weeks' notice in writing in respect of all or any part of the Services.
- 7.3 If circumstances arise for which FORSHAW GAULD is not responsible and which they consider make it irresponsible for FORSHAW GAULD to perform all or any part of the Services, then FORSHAW GAULD shall be entitled to terminate their appointment by two weeks' notice in respect of all or such part of the Services.
- 7.4 If the Client is in material breach of their Responsibilities and fails to remedy the same within fourteen days of receipt of a written notice from FORSHAW GAULD specifying the breach and requiring its remedy, then FORSHAW GAULD will be entitled by further written notice to the Client to terminate its engagement in connection with the Project.
- 7.5 The Client may, by notice in writing to FORSHAW GAULD, suspend all or any of FORSHAW GAULD's Services. On notice of suspension of all or any part of the Services FORSHAW GAULD shall cease such suspended Services in an orderly and economical manner compatible with a possible order to restart. If the suspension of the performance of all or any part of the Services exceeds six months in aggregate FORSHAW GAULD may by giving two weeks' notice treat the Project or that part of the Project as having been abandoned and the appointment of FORSHAW GAULD in respect of all or any part of the Services affected shall be automatically terminated.
- 7.6 Upon any suspension or termination under this clause the Client will pay FORSHAW GAULD:
 - 7.6.1 any instalments of the Fee and other sums which have become properly due to FORSHAW GAULD prior to the date of such suspension or termination and which remain unpaid (the final date for payment of which shall be as set out in clause 4); and



FORSHAW GAULD
ENGINEERS

- 7.6.2 a fair and reasonable proportion of the next following instalment of the Fee commensurate with the Services which FORSHAW GAULD has performed up to the date of such suspension or termination (the due date for which shall be the later of the date of termination or suspension and the date of issue of FORSHAW GAULD's valid VAT invoice for such proportion and the final date for which shall be 14 days after the due date for such proportion).
- 7.6.3 less any amounts previously paid by the Client to FORSHAW GAULD for the period up to the date of suspension or termination but including costs incurred by FORSHAW GAULD associated with suspending work in an orderly manner compatible with a possible restart.
- 7.7 Following any termination of FORSHAW GAULD's engagement howsoever arising FORSHAW GAULD will immediately take all necessary steps to end, in an orderly manner, the provision by it of the Services, such steps to be taken with all reasonable speed and economy and subject to the Client having paid all outstanding invoices submitted by FORSHAW GAULD that are properly due and including such amount owed under clause 7.6 FORSHAW GAULD will deliver to the Client, on request, copies in such form as the Client may reasonably require of all documents (whether in the course of preparation or completed) which FORSHAW GAULD holds in connection with the Project together with the originals and any copies which FORSHAW GAULD may hold of all documents provided to it by the Client or by others in connection with the Project provided that FORSHAW GAULD shall be entitled to keep such copies as necessary for compliance with the requirements of its professional indemnity insurers and professional body and FORSHAW GAULD shall notify the Client of the whereabouts of all such retained copies. A reasonable charge may be made by FORSHAW GAULD for their costs associated with the above.

8 LIABILITY

- 8.1 FORSHAW GAULD will endeavour to maintain, with reputable insurers, from the date hereof and for at least until six years further professional indemnity insurance in the amount of at least £1,000,000 for each and every claim or all claims attributable to the same act or omission or sources of acts or omissions consequent upon or attributable to the same original cause or source in relation to the Project but excluding claims arising from pollution and contamination, provided that such insurance is generally available in the market to members of the structural and civil engineering profession at a commercially realistic cost. FORSHAW GAULD shall within 7 days of the Client's reasonable request at any time, produce for inspection documentary evidence as to its compliance with this clause.



FORSHAW GAULD
ENGINEERS

- 8.2 The liability of FORSHAW GAULD under or in connection with the Services whether in contract or in tort or in negligence or for breach of statutory duty or otherwise for any claim shall neither exceed £1,000,000 nor the amount, if any, recoverable by FORSHAW GAULD by way of indemnity against the claim in question under professional indemnity insurance taken out by FORSHAW GAULD and in force at the time of the claim or when (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question.
- 8.3 Further and notwithstanding anything to the contrary contained in this document and without prejudice to any provision whereby liability is excluded or limited to a lesser amount, the liability of FORSHAW GAULD, if any, for any loss or damage (“the loss and damage”) shall not exceed such sum as it would be just and equitable for FORSHAW GAULD to pay having regard to the extent of its responsibility for the loss and damage and on the assumptions that:
- 8.3.1 all other consultants and advisers, contractors and sub-contractors involved in the Project shall have provided contractual undertakings, including the maintenance of insurance, on terms no less onerous than those set out in this document to the Client in respect of the carrying out of their obligations in connection with the Project;
 - 8.3.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage; and
 - 8.3.3 all the parties referred to in this clause have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
- 8.4 The Client agrees that FORSHAW GAULD shall not be responsible or liable for any consequential loss, injury, or damages suffered by the Client, including loss of use or earnings and interruption of business.
- 8.5 The Client shall look only to FORSHAW GAULD (and not to any of FORSHAW GAULD’s personnel) for redress for any matter. The Client may not pursue any claims in contract tort or statute (including negligence) against any of FORSHAW GAULD’s personnel as a result of carrying out its obligations under or in connection with the Project at any time.
- 8.6 No action or proceedings under or in respect of the Project whether in contract or in tort or in negligence or for breach of statutory duty or otherwise shall be commenced against FORSHAW GAULD after a date 6 years after the earlier of; the due date of the Fee as defined by paragraph 6 or practical completion of the Project or such earlier date as may be prescribed by law.



FORSHAW GAULD
ENGINEERS

9 INDEMNIFICATION:

9.1 Subject to the limitations in the LIABILITY section above, each of FORSHAW GAULD and the Client agrees to indemnify and hold harmless the other party (including its officers, directors, employees and representatives) from and against all losses, claims, damages and actions (including reasonable legal fees) that the other party may suffer, sustain or incur as a result of the other party's negligent actions or omissions or wilful misconduct.

10 ASSIGNMENT AND NOVATION

10.1 The Client may not assign the benefit of and its benefits and rights under this Agreement to any one or more of the Third Parties without written consent from FORSHAW GAULD, such consent to be given or withheld at FORSHAW GAULD's absolute discretion.

I agree to the terms and conditions as set out in this document:

On behalf of the Client:

Signed:

Print name:

Date:

For the purposes of invoicing, the client details are: (please complete)

Address:

Email:

Contact phone number: