



Client Terms & Conditions

DEFINITIONS & INTERPRETATION

- The following words and phrases shall have the meanings given below:
 - "ANF"** means A N Fabrications Limited (company number 09005297) whose registered office is at The Old Airfield Hospital, Norwich Road, Brockford, Stowmarket, Suffolk IP14 5NP.
 - "Bank Holiday"** means a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.
 - "Cancellation Period"** has the meaning set out in paragraph 47.
 - "CDM Regulations"** means the Construction (Design and Management) Regulations 2015 (SI 2015/51) as they apply to the Works and the site of the Works.
 - "Client"** means the person(s), firm, organisation or company that engages ANF to carry out the Works under the Contract.
 - "Contract"** means the contract between ANF and the Client for the carrying out of Works in accordance with these Client Terms & Conditions.
 - "Contract Sum"** means the sum defined in the Order or such other sum calculated in accordance with the Contract and agreed by ANF.
 - "HGCRA"** means The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
 - "Impediment"** means any impediment, prevention or default (whether by act or omission) by the Client (or any persons employed, engaged or authorised by the Client) or any utilities provider or statutory undertaker.
 - "Insolvent"** means insolvent within the meaning of section 113 HGCRA.
 - "Insurance Amount"** means £1,000,000 (one million pounds) in the aggregate or such other level and basis of professional indemnity insurance cover expressly stipulated in ANF's estimate proposal or ANF's written acceptance of the Order (as the case may be).
 - "Order"** means the Client's order for the Works (as set out in the Client's order form) or the Client's written acceptance of ANF's estimate proposal (as the case may be).
 - "Pay Less Notice"** has the meaning ascribed to it in paragraph 25.
 - "Payment Due Date"** means the first Friday following the Order and weekly thereafter.
 - "Specification"** means the specification for the Works agreed in writing by ANF.
 - "Variation"** has the meaning set out in paragraph 17.
 - "Works"** means the works described in the Specification.
- The Order is an offer by the Client to engage ANF to perform the Works in accordance with these Client Terms & Conditions. The Client should notify ANF if any information or provision appears to be missing from the Contract or is inaccurate.
- Unless agreed otherwise in writing by ANF, if there is a conflict between the Specification, the Order and the Client Terms & Conditions, the Client Terms & Conditions shall prevail.
- Regardless of whether the Order is in response to ANF's estimate proposal, the Order must be accepted by ANF before it legally binds the parties.
- References to paragraphs are to paragraphs of these Client Terms & Conditions and headings in this document shall not affect the interpretation of the Contract. Nothing in the Contract constitutes a partnership, joint-venture, co-ownership or any employment relationship between the Client and ANF.
- The Contract constitutes the entire agreement between the parties. These Client Terms & Conditions (as supplemented and amended by the Order) apply to the Contract to the exclusion of any other terms that the Client may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of ANF which is not set out in the Contract.
- An estimate proposal for the Works given by ANF shall not constitute an offer and shall only be valid for a period of 30 days from its date of issue or such other period of time for which ANF provides in its estimate proposal or ANF's written acceptance of the Order (as the case may be).
- ANF shall carry out and complete the Works in accordance with the Contract, with due diligence and in a good and workmanlike manner.
- ANF shall comply with and give all notices required by any statute, statutory instrument, rule or order or any regulation or bye-law (including the CDM Regulations) applicable to the Works. The Client shall pay any fees and charges payable in respect of such compliance and the Contract Sum shall be adjusted accordingly. For the avoidance of doubt, all responsibility in respect of planning-, listed building- and party wall-related matters shall sit solely with the Client (and its agent, if any).
- The Client shall comply with its obligations under the CDM Regulations (a summary of which is available at <http://www.hse.gov.uk/pubns/indg411.pdf>). If the Works do not include design, upon ANF's request (and in any event prior to ANF's commencement of the Works) the Client shall provide ANF with a copy of the written agreement(s) between the Client and its designer(s).
- The Client shall provide sufficient access to the site for ANF to perform its obligations under the Contract and shall in no way hinder or prevent ANF (whether by act or omission) from performing its obligations whether under the CDM Regulations or otherwise.

MATERIALS & GOODS

- Unless otherwise agreed in writing by ANF, ANF shall provide the materials and goods for the Works. The materials and goods for the works supplied by ANF shall be of the standards stated in the Specification or, where no standard is stated, of a satisfactory quality. ANF may amend the Specification if required by any applicable statutory or regulatory requirements. The Client shall provide to ANF, without charge, the goods and services that it has agreed to provide as set out in the Specification. (These goods and services are known as "attendances" and may include scaffolding, lifting equipment, skip, rubbish clearance, power and water supplies and toilet facilities.)
- The Client shall pay ANF all costs suffered or incurred by ANF in connection with any claim made against ANF for actual or alleged infringement of a third party's intellectual property rights

arising out of or in connection with ANF's use of the Specification. (Information about intellectual property rights can be obtained from the Intellectual Property Office at <https://www.gov.uk/government/organisations/intellectual-property-office>.)

- In this paragraph 13, "costs" includes all liabilities, costs, expenses, damages and losses (including, without limitation, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses). This paragraph 13 shall apply regardless of whether the Contract has otherwise been terminated or cancelled.
- The Client shall only own materials and goods that are to be incorporated into the Works and have been provided by ANF under paragraph 12, when ANF receives payment for them in full (in cleared funds). Until the Client owns those materials and goods, the Client shall:
 - store them separately from all other materials and goods held by the Client, so that they remain readily identifiable as ANF's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to them;
 - maintain them in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify ANF immediately if the Client becomes Insolvent; and
 - give ANF such information relating to them as ANF may reasonably require from time to time.
- Subject to paragraph 16, the Client may resell or use the materials and goods to which paragraph 12 refers in the ordinary course of its business (but not otherwise) before ANF receives payment for them but (should it do so) it does so as principal (and not as ANF's agent) and ownership of the materials and goods shall pass from ANF to the Client immediately before the time at which resale by the Client occurs.
- If the Client becomes Insolvent and/or has not made payment for the materials and/or goods to which paragraph 12 refers (or any materials and/or goods supplied by ANF under another contract) then, without limiting any other right or remedy ANF may have:
 - the Client's right to resell the materials and goods or use them in the ordinary course of its business ceases immediately; and
 - ANF may at any time:
 - require the Client to deliver up all materials and goods in its possession which have not been resold or irrevocably incorporated into another product; and
 - if the Client fails to do so promptly, enter any premises of the Client (or of any third party where the materials and goods are stored) in order to recover them.

VARIATIONS

- ANF shall carry out any reasonable variation to the Works that the Client may direct in writing (each a "Variation"). Variations shall be valued on a fair and reasonable basis with reference to the rates and prices in the Contract (or by reference to the Contract Sum if there are no rates and prices) and the Contract Sum shall be adjusted accordingly. The Client shall pay ANF any loss and/or expense incurred by ANF due to the regular progress of the Works (or any part of them) being affected (or being likely to be affected) by ANF's compliance with any Variation and the Contract Sum shall be increased accordingly.
- If ANF is delayed in carrying out or completing the Works by the ordering of any Variation or for any other reason beyond ANF's control, ANF shall notify the Client and the Client shall make such extension of time as is reasonable.
- ANF may, by giving notice to the Client, increase the Contract Sum to reflect any increase in the cost of the Works that is due to:
 - any factor beyond ANF's control (including, without limitation, foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials, manufacturing and transportation costs);
 - any amendment to the Specification necessitated by any applicable statutory or regulatory requirement (see paragraph 12);
 - any request by the Client to change the Specification or accelerate progress of the Works; or
 - any Impediment including, without limitation, delay caused by any instructions of the Client or failure of the Client to give ANF adequate or accurate or timely information or instructions.
- The Client shall pay ANF all loss and/or expense incurred by ANF due to the regular progress of the Works or any part of them (or the carrying out of any making good of defects under paragraph 21) being affected or being likely to be affected by any Impediment or any other reason beyond ANF's control and the Contract Sum shall be increased accordingly.

PRACTICAL COMPLETION & DEFECTS RECTIFICATION

- ANF shall determine when the Works are practically complete and shall notify the Client of the same in writing (whether by issuing its application for payment or otherwise). The Client shall notify ANF of any defects or faults that are due to ANF's failure to comply with its obligations under the Contract that appear in the Works during the period of 6 months following practical completion of the Works (or such other period referred to in ANF's estimate proposal or ANF's written acceptance of the Order, as the case may be). Subject to availability of the required materials, ANF shall make good such defects within a reasonable time from receipt of notification.

PAYMENT

- The Contract Sum is exclusive of amounts in respect of value added tax (VAT). In relation to any payment to ANF under the Contract, the Client shall pay to ANF such additional amounts in respect of VAT as are chargeable in respect of it and all other amounts required by law to be paid.
- ANF shall make applications for payment not later than 5 days after the expiry of the applicable Payment Due Date. Each application for payment shall set out the sum that ANF considers to be due to it and the basis upon which it is calculated by reference to:



- (a) the value of work carried out by ANF, determined in accordance with the rates and prices specified in the Contract (or by reference to the Contract Sum if there are no rates and prices);
- (b) the total value of all unfixed materials and goods delivered to, and placed on/adjacent to the Works or which are intended for incorporation in the Works; and
- (c) the valuation of any amount due under the Contract (including, without limitation, under paragraphs 9, 17, 19, 20, 22, 27, 31 and 32); less
- (d) any amount previously paid.

The final date for payment shall be 7 days after the expiry of the Payment Due Date (or such other number of days for which ANF makes express written provision in its estimate proposal or in ANF's written acceptance of the Order, as the case may be).

- 24. The Client shall pay the amount stated in the application for payment by the final date for payment unless it gives a Pay Less Notice in accordance with paragraph 25.
- 25. If the Client intends to pay less than the sum set out in ANF's application for payment, it shall no later than 1 day before the final date for payment give to ANF notice of that intention, specifying the sum that the Client considers due on the date the notice is served and the basis upon which it is calculated (a "Pay Less Notice").
- 26. Where a Pay Less Notice is given, the payment shall still be made on or before the final date for payment and shall not be less than that stated in the Pay Less Notice.
- 27. If the Client fails to pay any sum due to ANF under the Contract by the final date for payment, the Client shall pay interest on such overdue sum at the rate of 8% per annum above the base rate from time to time of the Bank of England at the final date for payment. Such interest shall accrue on a daily basis from the Payment Due Date until actual payment of the overdue amount in cleared funds, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 28. The Client shall pay all amounts due under the Contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law) and ANF may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Client against any amount payable by ANF to the Client or recover them from the Client as a debt.
- 29. The Client shall not assign, transfer or grant any rights over its rights or obligations under the Contract without ANF's prior written consent.

TERMINATION

- 30. Without limiting its other rights or remedies, ANF may give written notice of its intention to suspend performance of any or all of its obligations under the Contract if the Client fails to pay any amount payable to ANF under the Contract by the final date for payment. If:
 - (a) the Client's failure to make a payment continues for 7 days after the giving of a notice under this paragraph 30; or
 - (b) the Client becomes Insolvent; or
 - (c) ANF reasonably believes that the Client will imminently become Insolvent,
 then ANF may suspend performance of any or all of its obligations under the Contract. Where ANF exercises its right of suspension under this paragraph 30, it shall be entitled to be reimbursed by the Client a reasonable amount in respect of the costs and expenses incurred by it as a result of the exercise of that right and the Contract Sum shall be increased accordingly.
- 31. ANF shall be entitled by written notice to the Client to terminate immediately ANF's employment under and in connection with the Contract immediately if:
 - (a) the Client at any time is Insolvent; or
 - (b) the Client is in breach of its obligations under the Contract which the Client fails to rectify within 5 days of a written warning from ANF specifying the breach and requiring that it be remedied.

If ANF terminates its employment under this paragraph 31, it shall be entitled to receive from the Client the amount of any resultant loss, damage, and/or expense incurred by ANF which it would not have incurred had the Contract been duly performed in full.

- 32. On termination of the Contract for any reason, the Client shall immediately pay to ANF all of ANF's outstanding unpaid invoices and interest and all amounts due for payment under the Contract at the date of termination plus ANF's demobilising costs.
- 33. Rights, remedies, obligations and liabilities that have arisen at or before termination shall not be affected by the termination of the Contract, regardless of the reasons for the termination of the Contract.

DESIGN OBLIGATIONS

- 34. Insofar as the Works include design, ANF shall:
 - (a) Undertake all design work to the standard of an appropriate professional designer holding itself out as competent to take on work for such design;
 - (b) subject to the Client's payment in advance of ANF's photocopying charges, provide the Client with two copies of such drawings/details as are reasonably necessary to explain the design of the Works;
 - (c) maintain professional indemnity insurance at not less than the Insurance Amount for 6 years from the date of practical completion under paragraph 21 provided that such insurance continues to be offered on commercially reasonable terms to ANF at the time when the insurance is required to be taken out or renewed;
 - (d) subject to all sums due and payable to ANF under the Contract having been paid, grant to the Client an irrevocable, royalty-free, non-exclusive licence to copy and use ANF's design documents and to reproduce the designs and content of them for any purpose relating to the Works. Such licence shall enable the Client to copy and use ANF's design documents for the extension of the Works but shall not include a licence to reproduce the designs contained in them for any such extension; and
 - (e) not be liable for use of any of ANF's design documents for any purpose other than that for which they were prepared.
- 35. Nothing in these Client Terms & Conditions shall limit or exclude ANF's liability for:
 - (a) death or personal injury caused by ANF's negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter in respect of which it would be unlawful for ANF to exclude or restrict its liability.
- 36. Subject to paragraph 35 but without affecting any other limitation in the Contract, ANF's total liability under or in connection with the Contract shall be limited to the Insurance Amount in

the aggregate, which liability shall apply however that liability arises including (without limitation) a liability arising by breach of contract, arising by tort (including the tort of negligence) or arising by breach of statutory duty.

GENERAL

- 37. If any court or competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted. The remaining provisions shall continue in full force and effect.
- 38. No action or proceedings arising from the failure of ANF to keep to the Contract shall be commenced after the expiry of 6 years from the date of the failure of ANF to keep to the Contract (or such earlier date as may be prescribed by law).
- 39. If any invalid, illegal or unenforceable provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall be deemed to have been modified to the minimum extent necessary to make it legal, valid and enforceable.
- 40. Where under these Client Terms & Conditions an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, a day falling between Christmas Day and New Year's Day (inclusive), Good Friday or a Bank Holiday, that day shall be excluded.
- 41. If ANF does not insist immediately that the Client does anything it is required to do under the Contract, or if ANF delays in taking steps against the Client in respect of the Client breaking this Contract, that will not mean that the Client does not have to do those things and it will not prevent ANF from taking steps against the Client at a later date. If ANF only decides to take action in respect of one aspect of a breach of the Contract by the Client, or decides to exercise one legal right rather than another, it will not prevent ANF from taking action in respect of the entirety of the breach, or from exercising its other rights at a later date.
- 42. Any notice required to be given by either party under the Contract may be served by any effective means including (without limitation) email and shall be treated as effectively served if it is addressed, pre-paid and delivered by post:
 - (a) to the addressee's last known principal residence or if (s)he is or has been carrying on a trade, profession or business, his/her last known principal business address; or
 - (b) where the addressee is a company or a limited liability partnership, to the body's registered/principal office.
- 43. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 44. Either party may at any time refer any dispute or difference arising under the Contract to adjudication. The procedure for referring a dispute shall be governed by the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be such of the following nominating bodies as the referring party may select: Royal Institute of British Architects, The Royal Institution of Chartered Surveyors, constructionadjudicators.com, Association of Independent Construction Adjudicators or Chartered Institute of Arbitrators. A guide to the adjudication procedure can be found at <https://www.adjudication.org/sites/default/files/4125-1157-1200%20v%206,%20The%20Scheme%20Guidance%20Note.pdf>

GOVERNING LAW & JURISDICTION

- 45. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Either party may bring legal proceedings in the courts of England and Wales.



CANCELLATION RIGHTS

46. Paragraphs 47 to 51 (inclusive) do not apply if the Works are the construction of new buildings or the construction of substantially new buildings by the conversion of existing buildings.
47. Where the Client has not signed the Contract at ANF's business premises and/or the Works are not required to be carried out urgently, the Client may have the right to cancel the Contract within 14 days from the day of the conclusion of the Contract (the "Cancellation Period") without giving any reason. The Cancellation Period shall expire after 14 days from the date the Contract is signed by the Client.
48. To exercise its right to cancel, the Client shall inform ANF of the Client's decision to cancel the Contract by a clear statement (such as an email or a letter sent by post or email) which may be (but is not required to be) in the form of the model cancellation form below.
49. To meet the cancellation deadline, it is sufficient for the Client to have sent its communication to ANF (concerning the Client's exercise of its right to cancel) before the cancellation period has expired.
50. If the Client cancels the Contract, ANF shall reimburse to the Client all payments received by ANF from the Client (save for amounts retained pursuant to paragraph 51). ANF shall make the reimbursement:
 - (a) without undue delay, and not later than 14 days after the day on which ANF is informed of the Client's decision to cancel the Contract; and
 - (b) using the same means of payment as the Client used for the initial transaction (unless the Client has expressly agreed otherwise) and, in any event, the Client shall not incur any fees as a result of the reimbursement.
51. If the Client requested ANF's commencement of the Works during the Cancellation Period, the Client shall pay ANF an amount which is in proportion to what has been performed until the Client communicated to ANF its decision to cancel the Contract, in comparison with the full coverage of the Contract.

SUMMARY OF YOUR LEGAL RIGHTS

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website at www.adviceguide.org.uk or call 03454 04 05 06.

The Consumer Rights Act 2015 says:

- You can ask ANF to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if ANF can't fix it.
- If you haven't agreed a price upfront, the amount you are asked to pay must be reasonable.
- If you haven't agreed a time upfront, it must be carried out within a reasonable time.

The Client has the right to cancel this Contract within 14 days from the day of conclusion of the Contract without giving any reason. This right is explained in more detail in paragraphs 47 to 51 (inclusive) of the Client Terms & Conditions. Further, ANF may not start work during the Cancellation Period except at the express request of the Client.

If the Client wants ANF to start work within the Cancellation Period, the Client must sign and return Form A (below).

If the Client wants to cancel the Contract within the Cancellation Period, the Client must inform ANF of its decision to cancel the Contract by a clear statement (e.g. an email or a letter sent by post or email). The Client may use Form B (below), but its use is not obligatory.

Form A: Request to start work

[*] Delete as appropriate

A N Fabrications Limited
The Old Airfield Hospital
Town Lane
Brockford
Stowmarket
Suffolk IP14 5NF

Order reference:

Name of Client:

Address of Client:

I/We [*] hereby give notice that I/we [*] request that you commence the Works immediately.

I/We [*] confirm that I/we [*] have read paragraphs 50 to 54 of the Client Terms & Conditions on my/our [*] right to cancel the Contract.

I/We [*] understand that if I/we [*] later choose to cancel the Contract I/we [*] will be obliged to pay you an amount reflecting the proportion of the Works undertaken before I/we [*] notified you of my/our [*] decision to cancel the Contract.

Signed by the Client:

Dated:

Form B: Model cancellation form

[*] Delete as appropriate

A N Fabrications Limited
The Old Airfield Hospital
Town Lane
Brockford
Stowmarket
Suffolk IP14 5NF

Order reference:

Name of Client:

Address of Client:

I/We [*] hereby give notice that I/we cancel the Contract for the Works.

Signed by the Client:

Dated: