

# Calvert Brain & Fraulo Architectural Limited Terms & Conditions of Engagement



Calvert Brain & Fraulo Architectural Limited provide services as Building Design Consultants and in related disciplines. The following standard conditions of engagement apply to all work carried out by Calvert Brain & Fraulo Architectural Ltd.

## 1. Definitions

*The Company* : means Calvert Brain & Fraulo Architectural Limited; a company registered in England and Wales under Companies House No. 06122671; VAT registration No. 908 7877 69.

*The Client* : means the person or organisation that orders the work and to whom the work is invoiced.

*Work or Works* : means the services provided by the Company

## 2. Quotations & Fee Proposals

- 2.1 Quotations and fee proposals will set out the services to be provided by the Company and are open for acceptance for a period of 60 days from the date of the quotation or fee proposal, after which date they are invalid.
- 2.2 Quotations and fee proposals may be submitted on the basis of a percentage of the total construction cost, a fixed price or time charges based upon our standard hourly rates. Where time charges are used and the Client requests an indication of likely total hours to be charged, we will often not be able to gauge accurately the amount of time needed for a consultancy task until the work is well underway. Therefore any estimate of likely hours chargeable given to a Client, before work begins, should be regarded only as a guide and not a fixed amount.
- 2.3 Additional works, alterations and variations to the original brief ordered by the Client subsequent to the acceptance of the original quotation or fee proposal shall be charged at the Company's standard hourly rates unless a cost was originally provided for a specific task in the quotation or fee proposal. Alternatively, the Company may at its total discretion, negotiate a fixed fee for additional work.
- 2.4 Additional works, alterations and variations and method of payment shall be agreed in writing unless otherwise stated between the Company and the Client prior to the Company proceeding with the additional works. Where this is not practicable, the additional work shall be recorded by the Company and their Client notified as soon as practicable after the additional work has commenced.
- 2.5 If additional work becomes necessary during the course of a planning or building regulations application which requires immediate action in order to secure the permission that the Company was originally engaged to submit then the Company will take the necessary action to attempt to secure the permission regardless of whether or not additional fees have been agreed prior to the work being undertaken and the Company will invoice the client for this additional work at our standard hourly rates.

- 2.6 With respect to external specialist services and surveys which may be required in addition to the services of the Company, quotations and fee proposals will be prepared using the prevailing rates and schedules of prices of external specialists. Should such external services be subject to increased cost during the period between the date of the quotation or fee proposal and the date of the order to commence work, the Client will be obliged to pay the increased cost of external services and surveys and the Company will provide the necessary evidence to substantiate the increased cost.
- 2.7 Unless otherwise agreed, disbursements for reimbursable costs and expenses associated with, but not limited to travel, accommodation, subsistence and postage and the work for plan printing, photocopying and any other reasonable expenses will be added to invoices in addition to the agreed consultancy fees and will be subject to VAT. Reimbursement of costs and expenses are reviewed annually and charges may be varied from time to time. The Company shall still be entitled to payment.
- 2.8 Disbursements are charged at our standard rates as follows :

Mileage :	60p / mile
Printing :	A0 : £6.00 / drawing A1 : £4.00 / drawing A2 : £2.00 / drawing A3 : 50p / copy A4 : 15p / copy
Photocopying – Black and White	A3 : £1.00 / copy A4 : 50p / copy
Photocopying – Colour	At cost
Postage	At cost
Travel by Rail / Taxi / Flights	At cost
Out of Pocket Expenses (subsistence overnight accommodation etc.)	At cost
Information burnt onto CD Rom	£5.00 per disc
- 2.9 In order to prepare site location plans it is often necessary to download Ordnance Survey Maps online. The company usually purchases such items from Promap. The specialist suppliers conditions relating to Ordnance Survey Mapping apply. The cost of obtaining such maps will be charged in addition to the agreed fees at cost.
- 2.10 Rates and prices included in quotations and fee proposals and noted in these Terms and Conditions are all exclusive of Value Added Tax which will be applied at the prevailing rate (all rates are reviewed annually).
- 2.11 The Client must accept quotations and fee proposals before the services outlined in the quotation or fee proposal can be commenced by the Company.
- 2.12 If, following the receipt of our quotation or fee proposal, you instruct us to proceed or to continue with our services, we shall be entitled to assume your acceptance of the quotation / fee proposal and these terms.

- 2.13 Any work agreed and subsequently cancelled may attract abortive costs. Abortive costs will be charged at the Company's standard hourly rates plus reimbursable costs and expenses as appropriate. External specialist services and surveys will also be chargeable, or any part thereof, where costs are incurred prior to cancellation.

## 3. Acceptance of Quotations & Fee Proposals

- 3.1 Unless specifically agreed in writing to the contrary, the Client is the person, company, authority or other body to whom our proposal or fee quotation is addressed, unless the Client is specifically identified otherwise and the company, authority or other body to whom our proposal or fee quotation is addressed holds full legal agency to agree to enter into a contract with the Company on the Client's behalf.
  - 3.2 These terms shall not be treated as varied or waived unless otherwise agreed in writing by the parties to the contract that these terms are to be varied or waived. Subject to any agreement, these terms have precedence over any others contained in other documents, emails or letters.
  - 3.3 These Terms and Conditions of Engagement are personal to the Client and the services and all written reports or other communications shall be for the Client's benefit and reliance only. No reliance, obligation or reliability is acknowledged to any other party unless specifically agreed in writing.
  - 3.4 It is agreed that neither the Company nor the Client intends that any of these terms & conditions of engagement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person other than the Company and the Client. The Contract (Rights of Third Parties) Act 1999 shall not apply.
  - 3.5 The Client agrees that any order raised for works to be undertaken by the Company will be based on the applicable proposed fee and these Terms and Conditions of Engagement.
  - 3.6 The Client must inform the Company if the Company is being instructed to replace any existing Architect / Building Designer in order that the Company may contact the previous Architect / Building Designer to establish that their appointment was properly determined and the Client holds a license to use any information such as drawings etc. The Client must also inform the Company, for the same reasons, if the work which is to be undertaken is separate work within a project where another Architect / Building Design is or has been engaged.
- ## 4. Notice of Right to Cancel (7 Day Cooling Off)
- 4.1 As the Client, you are entitled to cancel your agreement with the Company without being penalised provided this is done within seven days from the date you enter into it. Please note that you may be required to pay for services supplied if you do not cancel before works have commenced in performance of the Contract.

# Calvert Brain & Fraulo Architectural Limited Terms & Conditions of Engagement Continued



## 5. Services

- 5.1 We will exercise reasonable skill and care in carrying out our services.
- 5.2 Unless expressly agreed in writing as a qualification to this clause, the Company shall not be liable for the performance of any other person or company not engaged by us, nor responsible for checking or reporting on their performance.
- 5.3 Whilst we make every effort to check and validate information supplied by clients and third parties, we cannot be responsible for errors arising directly or indirectly from incorrect information supplied to us.
- 5.4 Our drawings will be prepared in accordance with the prevailing Building Regulations and the relevant standards, subject to professional judgment. Normally our drawings will be checked by Building Control or an Approved Inspector and occasionally, due to different interpretations of standards, modifications are required to our submitted drawings. We would therefore recommend that works on site are only commenced after receipt of approval from Building Control or the Approved Inspector. Any works undertaken without such approval is at the Client's own risk.

## 6. Feasibility / Scheme Designs

- 6.1 Fees for Feasibility / Scheme design stage are quoted on the basis that the Company prepares an initial design to meet the original Client brief and then modifies it once or twice to meet exact Client requirements. Fees quoted do not include for multiple changes to drawings or completely redesigning a scheme after preparation of the initial design. If significant redesign work is required then the Company reserves the right to charge additional fees for continued design development.
- 6.2 Additional fees will be charged on a time charge basis at our standard hourly rates for the staff working on the project. Copies of timesheets will be made available if requested to corroborate time charged.

## 7. Planning Permission

- 7.1 Fees for Planning design stage include for our services up to and including submitting the application. Sometimes additional changes are required by the Planners during the planning process. At the time of quoting for our services we are unable to advise as to whether or not this will be the case and therefore our fees do not include for any work that may be required during the Planning process to alter or change the drawings. We would also note that our quoted fees for the Planning design stage do not include for discharging any Planning Conditions that may be attached to the Planning Approval, unless specifically noted in our quotation. Please also note that we cannot guarantee that Planning Permission will be forthcoming.

- 7.2 The Company will use the online service provided by the Planning Portal to make your planning application and will include your email address with all of the drawings and other information required to make the application. When the application is submitted to the Planning Portal they will send you an email requesting payment of the planning fee plus the fee of £20 levied by the Planning Portal for handling the application. Your application will not be submitted to the Local Authority until such time as you pay the required fees. Once the fees have been paid the Planning Portal will submit the application to the Local Authority after which the application will be vetted by the Local Authority and when validated we will receive an email confirming validation, which we will forward on to you. If you are not comfortable with this system please let us know and we can make alternative arrangements.

- 7.3 Section 106 Agreements. The Company will not be responsible for administering any conditions, particularly pre-commencement conditions in relation to a Section 106 Agreement. Everything required to comply with a Section 106 Agreement associated with a planning application handled by the Company needs to be administered by the building owner, land owner or developer. Equally, no responsibility will be taken by the Company for any Section 106 Agreements associated with permissions originally handed by other businesses.

## 8. Community Infrastructure Levy (CIL)

- 8.1 The Company will under no circumstances be responsible for payment of the CIL. Overall responsibility for paying CIL rests with the building owner, land owner or developer.
- 8.2 When applying for Planning Permission the Company will fill in form O at the time of making the application for Planning Permission. Form O simply confirms the applicant details, development description and general information to determine whether CIL is liable. Further forms need to be submitted by the building owner, land owner or developer to the relevant Authority at various stages prior to work commencing on site and the responsibility for all further administration of CIL rests with the building owner, land owner or developer.
- 8.3 Arrangements for CIL when it applies varies between different Authorities. Reference must be made to the relevant Authorities for their specific CIL regulations and charging schedule.
- 8.4 CIL exemptions will not apply automatically and applications need to be made at least one day prior to works commencing in order to obtain the appropriate exemption. The commencement of work includes demolition of existing structures on the development site and may include decontamination.
- 8.5 Please note that the Company will not be held responsible for applying for CIL exemption. Full responsibility to apply for CIL exemption remains with the building owner, land owner or developer.
- 8.6 Penalties (surcharges) will apply for non-compliance with the regulations.

## 9. Building Regulations

- 9.1 Our quoted fees for preparing drawings for Building Regulations purposes do not include for preparing a specification, tendering and undertaking the role of Contract Administrator / Project Manager and only relates to the preparation of drawings sufficient to obtain Building Regulations approval.
- 9.2 Fees quoted by Calvert Brain & Architectural Limited in relation to obtaining Building Regulations Approval are purely for architectural work associated with obtaining Building Regulations. It may be that some structural engineering design work is required at Building Regulations stage. The cost of any structural engineering design work will be in addition to the quoted architectural fees.
- 9.3 Drawings prepared for Building Regulations purposes only contain information sufficient to obtain Building Regulations Approval, i.e. sufficient information to enable the Checking Authority to confirm that the work will comply with the Building Regulations Approved Documents valid at the time of the application.
- 9.4 Building Regulations approvals may be issued by the relevant authority or approved inspector with or without conditions. If an approval is obtained with conditions the Client or their building contractor will be required to submit additional information to the relevant building regulation authority as and when the conditional information becomes available during the construction process. If the Company is requested to submit conditional information on behalf of the Client or his contractor, additional time charges may be levied.
- 9.5 Drawings for Building Regulations will consist of the plans and elevations prepared for Planning Permission with one or two additional sections and notes sufficient to obtain Building Regulations Plan Checking Approval. Additional detailing for construction purposes is likely to be required in addition to drawings prepared for Building Regulations. The Company will provide a fee for the preparation of additional detailing if requested.
- 9.6 If a site investigation is not available with recommendations for foundations and ground floor slab for the project, the Company will make reasonable assumptions on what is required for foundations and ground floor structure based upon the assumption that there are reasonable ground conditions. In these circumstances, if the ground conditions on site vary from those assumed, the Company will not be held responsible for any additional costs that may be incurred by the Client or his Building Contractor. The Company strongly advises that a site investigation is undertaken to provide definitive advice on the structural requirements for the foundations and ground floor slab.

# Calvert Brain & Fraulo Architectural Limited Terms & Conditions of Engagement Continued



## 10. Consents not Obtained by the Company

- 10.1 The Company does not obtain the following consents :
- Flood Defence Consent and Consent to Discharge from the Environment Agency,
  - Land Drainage Byelaw Consent and Consent to Discharge from an Internal Drainage Board
  - Surfacewater and Foul Drainage Consents from Anglian Water.

The Company can instruct specialist sub-consultants to obtain the consents listed above, on behalf of Clients, but specific Client instruction is required before this can be done.

## 11. Base Drawings

- 11.1 If the Company is preparing Planning and Building Regulations drawings for Clients based upon designs prepared by others, we will assume that drawings and information provided to us is the most up to date and relevant information. In the case of the preparation of drawings for Building Regulations purposes based upon a previously approved Planning Permission we will assume that drawings provided are the approved Planning drawings. It is the Client responsibility to ensure that current approved Planning drawings are provided at commencement of our work. Any abortive work resulting from incorrect information being provided to the Company will be charged on a time charge basis at our standard hourly rates of charge.

- 11.2 If the Company takes over from a previous consultant, for example, to prepare Building Regulations drawings from Planning drawings prepared by others, the Company cannot be held responsible for any mistakes, discrepancies or inconsistencies in the work prepared by the previous consultant. If any such errors become apparent after our work is complete then the Company reserves the right to charge additional fees to update our drawings to the current version of the scheme or to put right our drawings, as necessary.

## 12. Cost Advice

- 12.1 The Company is unable to provide any accurate cost advice. If square metre build cost rates are discussed by the staff of the Company this information must be considered as approximate non-specific cost advice. If accurate cost advice is required then the Company will, at the request of the Client, obtain a quotation from a suitably qualified Quantity Surveyor to accurately cost the proposed works.

## 13. AutoCAD files

- 13.1 Electronic AutoCAD (.dwg) files remain the property of the Company and will not be released under any circumstances. Drawings will be issued in electronic Adobe (.pdf) format for use by the Client.

## 14. Time for Completion

- 14.1 Whilst every effort will be made to commence and complete the works in accordance with the agreed programme, the Company accepts no responsibility for delays occurring beyond the control of the Company and / or any subsequent losses sustained by the Client.

## 15. Unforeseen Conditions

- 15.1 If, during the execution of the works, conditions arise which could not have been reasonably foreseen, the Company will give written notice to the Client of the effect (if any) on the programmed completion of the works and a claim for additional payment (if such is considered justified).
- 15.2 The Company shall not be held liable for any losses or damage in the event that it is unable to carry out any service for any reason beyond our control including (without limiting the foregoing); act of God, acts of terrorism, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or any other action taken by employees in contemplation or furtherance of dispute. During the continuance of such a contingency either party may by written notice to the other terminate the services and the Client shall pay for work done and disbursements incurred up to that time.
- 15.3 The Company takes no responsibility for any costs associated with the failure to advise on boundaries, easements, underground or overhead services, rights of light and The Party Wall etc. Act 1996

## 16. Commercial Charging Rates

- 16.1 The Company's hourly charges are based on the time as recorded. The Company has a duty to record time and expenses accurately.
- 16.2 The Company's fees take into account the level of seniority and experience of the staff members who are working for the Client and also the degree of responsibility and skills needed.
- 16.3 The Company may be obliged to pay out fees and expenses on the Client's behalf such as specialist services or surveys which can be front loaded and substantial. Accordingly, the Company reserves the right to request payment from the Client on account for these services.
- 16.4 Where external specialist services and surveys are required and where the costs are substantial and are to be paid by the Company, we will charge an uplift in the costs of 10% to cover handling of these costs.
- 16.5 When charging on the basis of time charges for commissions that require travel for site visits, site meetings, meetings away from the office or for other reasons, we charge for our time travelling to and from site, time on site as well as the time in the office undertaking the work relating to the commission including time considering the issues that we are appointed to undertake and time for the Principal to check documentation prior to issue.

## 17. Ad-Hoc Advice Given During Site Visits

- 17.1 Should ad-hoc advice be given during a site visit, then the Company will always follow up with written confirmation of any verbal advice given whilst on site, unless we are appointed to prepare follow-on drawings or specifications. Fees quoted on the basis of time charges for site visits will therefore include time travelling to and from site, time on site and time back in the office preparing any written correspondence.

## 18. Invoices

- 18.1 The Company will generally render invoices at the time that either Planning or Building Regulations submissions are made or if more appropriate interim fee accounts will be rendered at appropriate stages in the design process. In particular if design co-ordination or Client approval is extended then interim accounts will be rendered to cover work in progress. Where the value of design or report work is small, the Company may request payment in advance of the work commencing.
- 18.2 Where fees are quoted on the basis of a percentage of the total construction cost initial and interim invoices will be based upon appropriate agreed estimates of the total construction cost. As design work proceeds and as actual construction costs are known, as a result of their calculation by a quantity surveyor or through tendering, further interim invoices and final invoices will be raised based upon the actual total construction cost and will include any uplift in the fee as a result of increased construction costs over and above the original estimate.

Should a scheme be designed as instructed by the Client and then be subject to value engineering to reduce the total construction cost, invoices for work completed up to the commencement of the value engineering will be based upon the higher total construction cost prior to the value engineering commencing.

Design work required to modify the original scheme for value engineering purposes will be charged as an additional fee on the basis of time charges at our standard hourly rates. Ongoing work after completion of the value engineering process will be based upon the reduced construction cost resulting from the value engineering process.

Should the Company's appointment cease for any reason, such as tender returns exceeding the Client's budget, then fees up to the point at which the Company's appointment ceases will be based upon the lowest tender for the project obtained by the Company and will not be based upon any alternative construction costs obtained by the Client.

- 18.3 VAT will be added to all fees, disbursements and other reimbursable costs

- 18.4 Payment of fees and expenses rests with the Client unless payment by a third party has been agreed in writing with the Company.

## Calvert Brain & Fraulo Architectural Limited Terms & Conditions of Engagement Continued

18.5 Payment of invoices is due 14 days in the case of individuals and 30 days in the case of companies following the date of the invoice.

18.6 Payment of invoices can be made by cheque or BACS.

18.7 If the Client fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to :

- i) Decline to act further
- ii) Charge the full value of work done
- iii) Charge the Client interest on the amount unpaid at the rate of 3% per annum above Nat West Bank Base Rate on a monthly basis, until payment in full is received.

### 19. Interim Invoices

19.1 If the company decides interim invoices will be raised at month end or financial year end or at any other point that the company believes to be reasonable, during any given commission. The decision to raise an interim invoice will be entirely at the company's discretion, whether the client has specifically agreed to interim payments or not. The value of interim invoices will usually be based upon work in progress time valued on the basis of the stated hourly rates of charge for the appropriate member of staff as given elsewhere in these terms and conditions of engagement. Alternatively a percentage completion of the project will be applied to the agreed fee for the commission and invoices raised on the basis of the calculated amount.

### 20. Intellectual Property

20.1 The Company's work including reports, designs, drawings and other services is licensed to the Client for the purpose of the Client's current instructions. All other copyright and moral right is reserved and asserted. The Company's logo is a trademark and is hereby asserted.

20.2 The Company's work will remain the exclusive property of the Company until the relevant invoice is paid in full, and the Company accepts no liability or obligation for any reports, designs, drawings or other services, for which our rendered invoices remain unpaid.

### 21. Archiving

21.1 The Company will store the original reports, designs, drawings and other documentation prepared for the Client in the Company's archive at no additional cost for a period of 6 years. However, should the Client (or the Company to enable the Company to deal with any further instructions from the Client) require further copies of the original reports, designs, drawings and other documentation, then the Company will charge the Client for the work necessary to comply with the Client's instruction at the Company's standard hourly rates plus disbursements. Note : Electronic AutoCAD (.dwg) files will not be released as Clause 12 of these Terms and Conditions of Engagement.

### 22. Complaints

22.1 In the event that the Client has a concern or complaint about the Company's services then the Client should approach a Director as soon as practicable after the concern or complaint has arisen.

22.2 Should the Client continue to be dissatisfied the matter shall be first referred to a Mediator to be agreed between the Company and the Client or in default of such agreement to be referred to Adjudication or Arbitration under the terms set out in the appropriate Agreement in The Association of Consulting Engineers Conditions of Engagement.

### 23. Statutory Rights

23.1 These terms and conditions do not affect the Client's statutory rights.

### 24. General Data Protection Regulation (GDPR)

24.1 The Company shall only hold personal information relating to the Client which it believes is necessary for The Company to provide the agreed services. The client has the right under GDPR to request the information The Company holds and to make any necessary changes to ensure that it is accurate and kept up to date. The Company will not, without prior consent by the Client, pass any personal information onto any third parties except pursuant to the agreed services being provided by the Company or where required to do so by statute, legal reasons or requested by the government.

24.2 The Company will hold personal information about you that it believes necessary to carry out the agreed services. This information may include : your name; your company name; your telephone number; your address; your email address(es); your bank details (as shown on any cheques received). This information will only be shared with third parties as necessary in order to carry out our agreed services. These third parties may include Local Council and Building Control Authorities, specific agencies such as Environment Agency, Highways Agency, IDB etc., Subconsultants and Subcontractors and Building Contractors and their Subcontractors if we are tendering a project on your behalf. The Company confirms that your personal information will not be passed to any third party not connected to the services that we have been appointed to provide.

### 25. Vehicle Tracking Software Contribution

25.1 Should we need to use specialist software to prepare a drawing to show vehicle tracking on a site, then we must make a one off charge per project of £50.00 + VAT.

### 26. New Build Warranties

26.1 If you are constructing a new dwelling or converting an existing building into a new dwelling, you will need a Building Warranty in addition to Planning Permission and Building Regulations Approval. You must ensure that you make arrangements to put in place the Building Warranty in these circumstances. This is not something that we will arrange for you, nor is it something that we are able to advise you upon because it is effectively an insurance policy and we are not insurers brokers. It is your responsibility to make sure you have a Building Warranty in relation to the construction of a new dwelling as it will be required by anyone requiring a mortgage on the completed property within the first 10 years of completion of the property.

### 27. Waterproofing of Subterranean Structures

27.1 The Company will not take responsibility for the waterproofing of any basement or other subterranean structures. Where below ground waterproofing is required we will require the appointment of a specialist waterproofing company to carry out the necessary risk assessments and designs in accordance with BS 8102:2009 : Code of practice for protection of below ground structures against water from the ground and all of our drawings and designs will refer to waterproofing by specialist.

### 28. Construction (Design and Management) Regulations 2015 (CDM Regulations)

28.1 In April 2015 the Construction (Design and Management) Regulations changed to include domestic projects. Previous to this date the CDM Regulations only applied to commercial work or projects where demolition was occurring. If appointed to undertake design work The Company will act as Principal Designer in accordance with the Construction (Design and Management) Regulations 2015 up to the stage of work we have been appointed to undertake, but we will require a specific appointment to act in this capacity.

28.2 We cannot act as Principal Designer under the CDM Regulations during the construction phase of a project if we have no involvement during the construction phase of the project.

### 29. Building Safety Act 2022

29.1 From 1<sup>st</sup> October 2023 there have been some significant changes to the Building Regulations as a result of the introduction of the Building Safety Act 2022, which has come about due to the tragedy at Grenfell. It is now a requirement of the Building Regulations that all Clients including a domestic Client undertaking building work must appoint a Principal Designer and a Principal Contractor prior to a Building Regulations application being made, for even the smallest amount of building work.

## Calvert Brain & Fraulo Architectural Limited Terms & Conditions of Engagement Continued

- 29.2 These roles are in addition to similar appointments which are required in accordance with the CDM Regulations 2015.
- 29.3 We will require a specific appointment if we are required to act as Principal Designer in accordance with the Building Safety Act. We reserve the right in certain circumstances to decline the appointment to act as Principal Designer in accordance with the Building Safety Act, in which case a Client will need to appoint a separate Principal Designer in accordance with the Building Safety Act.
- 29.4 Any additional work during the construction phase of a project that may result from an appointment as Principal Designer under the Building Safety Act, where we have no appointment to undertake any duties during the construction phase, will be charged on the basis of time charges at our standard hourly rates plus disbursements plus VAT.