

TERMS OF BUSINESS (2021.1)

The following Terms of Business are applicable to all services provided by us to you.

Interpretation

"**Agreement**" means this document and any attached fees proposal;

"**Business Days**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Client**" (or "you") means the person or company to which FLAC is providing the Services;

"**FLAC**" (or "we" or "us") means Forbes-Laird Arboricultural Consultancy Limited (please see Section D) for company details);

"**Intellectual Property**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; and

"**Services**" means the services which FLAC has agreed to supply to the Client.

1. Instructions & Intellectual Property

1. Any instructions issued by you shall constitute an offer by you to purchase services from FLAC in accordance with the terms of this Agreement. The offer shall only be deemed to be accepted when FLAC confirms in writing that it accepts your instructions at which point a binding contract, subject to the terms of this Agreement, shall come into existence. DO NOT INSTRUCT US IF THIS IS NOT ACCEPTABLE.
2. If you require FLAC to follow any invoicing protocol, you agree to provide details of this to FLAC with your initial instructions and any purchase orders or other documentation required to comply with this protocol shall be supplied promptly by you to FLAC.
3. Instructions from clients based overseas are only accepted where the client has appointed a professional representative in the UK (such as a firm of solicitors or accountants) who will undertake responsibility for payment of FLAC's fees in lieu of the principal client or where payment of fees are made in advance.
4. All Intellectual Property in or arising out of or in connection with the Services, including but not limited to Intellectual Property in documentation issued by FLAC (whether hard or digital copy) shall be owned by FLAC. Subject to payment in full of all fees due to FLAC by the Client under this Agreement, FLAC shall license all such Intellectual Property to the Client on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Services and any deliverables provided as part of the Services.
5. FLAC reserves the right to revoke the licence granted under sub-clause 4 of this clause 1 if the Client breaches this Agreement in which event the Client shall return any copies of the documentation issued by FLAC and delete any hard or digital copies in the Client's possession. Any further use of documentation issued by FLAC (or copies thereof) after such licence has been revoked will be considered by FLAC to be an infringement of its Intellectual Property rights. If FLAC terminates this Agreement under clause 6.1, the licence granted under sub-clause 4 of this clause 1 will automatically terminate.

2. FLAC and Client's Obligations

1. FLAC shall:
 - a. provide the Services using reasonable care and skill; and
 - b. use reasonable endeavours to meet any performance dates specified by the client, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
2. FLAC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Client in any such event.
3. Except as otherwise stated in this clause, all other warranties express or implied, statutory or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.

4. The Client shall:
 - a. co-operate with FLAC in all matters relating to the Services;
 - b. provide FLAC with such information, materials and access as FLAC may reasonably require in order to supply the Services, and ensure that any information provided is accurate in all material respects; and
 - c. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

3. Charges and Payments

1. The charges for the Services shall be calculated based on the hourly rates set out in Section B) above unless otherwise agreed in writing by the parties. The daily rates set out in Section B) shall be charged where stated in the accompanying fee proposal.
2. FLAC reserves the right to review and increase its fee rates every three years during the course of this Agreement. Any such increases will be communicated in writing to the Client.
3. FLAC shall be entitled to charge the Client for any expenses reasonably incurred by FLAC in the performance of the Services. Further details of such expenses are outlined in Section B (accommodation and subsistence) and in Clause 4 below.
4. FLAC reserves the right to submit monthly invoices for projects in excess of 4 weeks in duration but shall otherwise invoice upon completion of the Services.
5. If the Client fails to make any payment due to FLAC under this Agreement by the due date for payment, then without limiting any other rights or remedy available to it, FLAC shall have the right to charge interest on the overdue amount at the rate of 5% per annum above the then current base lending rate of the Bank of England, or if higher the rate chargeable under the Late Payment of Commercial Debts (Interest) Act 1998 with such interest accruing on a daily basis from the due date until the date of receipt of payment of the overdue amount in cleared funds, whether before or after judgement, and compounding quarterly.
6. The hourly rates set out in Section B) will be charged in units of half an hour.
7. All new clients will be charged a one-off administration charge of £75 exc. VAT (unless otherwise agreed in writing).
8. For first time instructions from new clients, a standard minimum fee of £375 exc. VAT (which includes the one-off administration charge) will apply. This minimum fee is not applicable to existing clients.
9. FLAC reserves the right to charge the Client for all reasonable costs and expenses arising from cancellations or postponements where less than 3 Business Days' notice is provided by the Client. This includes but is not limited to reasonable preparatory time already spent by FLAC staff.
10. A trial reservation fee of 50% of the special day rate fee set out in Section B) above (or such other rate as is agreed between the parties in writing) multiplied by the number of days reserved will be charged where FLAC's services at a trial are postponed or cancelled with less than 14 days' notice prior to the first day of the trial.
11. Settlement terms for invoices are 28 days from the date of the invoice unless expressly agreed otherwise in writing for any particular instruction.
12. Once issued by FLAC any invoice made out to a party pursuant to details received by FLAC under sub-clause 2 of clause 1 shall not be reassigned to any other party, except upon payment in advance to FLAC a fee of £300 exc. VAT for which a receipted invoice will be provided by FLAC.
13. Invoices issued by FLAC that contain percentage division between Clients of a larger total sum shall not have these percentages subsequently amended either a) at all in the case of invoices bearing a date from a prior calendar year or b) at all in the case of invoices that have already been paid or c) in other cases except upon payment in advance to FLAC of a fee of £300 exc. VAT for which a receipted invoice will be provided by FLAC.
14. Nothing in sub-clauses 12 and 13 of this clause 3 shall require of Clients a fee in respect of any invoice issued by FLAC to a party not identified as the invoicee under sub-clause 2 of clause 1 or with a percentage division different to the division we were previously asked to apply.
15. The date of any invoice issued by FLAC shall not subsequently be revised and any monies due thereunder shall remain due and payable according to our settlement terms under sub-clause 11 of this clause 3 or as previously agreed in writing.

Please note that we view prompt settlement of accounts as a matter of professional courtesy

4. Incidental Expenses

1. All expenses reasonably incurred in the course of providing the Services are chargeable to the client unless agreed otherwise in writing. This includes but is not limited to mileage (55 pence per mile), outsourced printing (at cost + 10%) and digital imagery (at cost)
2. Flights: FLAC staff will fly budget/economy class for domestic travel & travel to the Irish Republic, where available. FLAC staff will fly Business Class for international travel. All flight and related charges (including airport parking) are rechargeable to the Client.

3. Unless expressly agreed otherwise, the "accommodation / subsistence" charges set out in Section B) above will apply where overnight accommodation is required. This applies to any instructed action that would necessitate FLAC staff leaving before 0700hrs on the day concerned.
4. Disbursements made on clients' behalf (e.g. payments made for plant material or to tree contractors) attract a 10% handling charge unless otherwise agreed in writing.
5. By way of example only, in-house printing charges (unless agreed otherwise in writing) include: report hard copy charge £11.25 - £90.00 per bound item, depending on the complexity of the documentation concerned; colour dwgs A1 @ £6.00, A0 @ £9.00.

5. Liability

1. Subject to sub-clause 4 of this clause 5:
 - a. FLAC shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement; and
 - b. FLAC's total liability to you in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000 (five million pounds sterling).
2. Any report or other deliverable provided to the Client by FLAC as part of the Services may be relied upon by the Client only and FLAC accepts no liability to any third party in respect of, arising from or in connection with any such report or deliverable. You agree to reimburse us on demand for any liability or costs (including legal costs) that we incur in connection with any claim made by any third party in respect of, arising from or in connection with any such report or deliverable.
3. Trees are dynamic living organisms capable of achieving considerable size and structural complexity. Trees are exposed to and can become damaged by the elements and by human activity, and they have co-evolved with decay-causing organisms that can degrade and sometimes destroy their structural integrity. Due to genetic characteristics and local microenvironmental factors this integrity can be innately uncertain. The laws and forces of nature dictate a natural failure rate even among trees that are healthy and structurally sound. By their very nature, therefore, trees cannot be considered entirely hazard-free. Tree surveys and or tree inspections are, inherently, only a snapshot in time of the physiological and structural condition of the trees concerned. Unless otherwise stated in our reporting material, all such surveys and inspections are undertaken from ground level. Any structural defects present might be masked by vegetation, whether the tree's foliage, plants growing round the base of the tree, or climbing plants growing on the stem and into the crown. For these reasons, and subject to sub-clauses 1 and 4 of this clause 5, FLAC accepts no liability for harm arising from tree failure where such failure was not reasonably foreseeable under all the circumstances at the time of FLAC's survey or inspection and in any event where such failure was reasonably foreseeable, FLAC accepts no liability unless it is in breach of sub-clause 1.a of clause 2.
4. Nothing in this Agreement shall limit or exclude FLAC's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or fraud or fraudulent misrepresentation.

6. Termination

1. Either FLAC or the Client shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the other party if:
 - a. the other party commits a material breach of this Agreement which, if such breach is capable of remedy, it fails to remedy within 30 days of receiving notice to do so by the other party; or
 - b. the other party becomes insolvent, is unable to pay its debts or is deemed unable to pay its debts within the meaning of either section 123 or section 268 of the Insolvency Act 1986 or an order is made or a resolution passed for the liquidation, administration, winding-up, dissolution or bankruptcy of the other party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer is appointed over all or any substantial part of the assets of the other party or the other party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.
2. On termination of this Agreement for any reason, the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected and any clauses which expressly or by implication have effect after termination shall continue in full force and effect.

7. General

1. This Agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of FLAC which is not set out in this Agreement.

2. The Client shall not, without the prior written consent of FLAC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. FLAC may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
3. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by events outside our reasonable control ("Force Majeure Event"). Our performance under this Agreement is deemed to be suspended for the period that the Force Majeure Event continues. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Agreement may be performed despite the Force Majeure Event.
4. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
5. A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
6. A person who is not party to this Agreement shall not have any rights under or in connection with it.
7. This agreement and any dispute or claim arising out of it or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by English law and you and we irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Forbes-Laird Arboricultural Consultancy Ltd