

Terms and Conditions

Unless otherwise agreed, these terms of business apply to any future instructions. Continued instructions will amount to your acceptance of these terms and conditions of business.

Any fee proposal/quotations we provide you with remain open for a period of three months.

1. The Landscape Architect's Responsibilities

Keary Design Associates Limited Ltd as the Landscape Architects [hereinafter referred to as KDA] shall:

- 1.1. Exercise reasonable skill and care in performing the services in accordance with the current edition, at the time of signing the Offer Agreement, of the Landscape Institute's Code of Standards of Conduct and Practice for Landscape Professionals.
- 1.2. With David Keary as a Chartered Landscape Architect and Designer Member of the British Association of Landscape Industries, operate and uphold the quality management procedures set out by these organisations.
- 1.3. As a Landscape Architect, act as the Client's representative and act fairly when dealing between Client and any other party. Contracts will normally be executed under the [JCLI Homeowners or Landscape Minor Works](#) agreement.
- 1.4. Provide advice on compliance with statutory requirements.
- 1.5. Will be impartial in administering the terms of a contract between Client and other parties.
- 1.6. Co-operate with other parties and persons appointed, co-ordinate and integrate their work and pass relevant information to them.
- 1.7. Make no material alteration to the Services or the approved design without the consent of the Client, except in an emergency or where required to do so by statutory bodies.
- 1.8. Advise on progress in the performance of the Services and of any issue that may affect the programme, cost, or quality of the project.
- 1.9. Visit the site at intervals appropriate to the progress of the works if this has been agreed as part of the original contract. Additional inspections/visits to the site will be conducted by agreement with the Client.
- 1.10. Subject to matters beyond KDA's reasonable control, use reasonable endeavours to perform the services in accordance with an agreed programme and any changes to the services or programme agreed with KDA. KDA cannot guarantee that any programme will be fully adhered to if affected by external forces, Consultants, Local Authorities, Regulatory Bodies, Specialists, Manufacturers or Suppliers or similar.

2. Target and Cost

KDA will endeavour to achieve but cannot guarantee that any target or budget cost or time schedule will be met, particularly where approvals are awaited from any other parties; including planning permissions, ecological or conservation consent, nor can KDA guarantee the performance, work or products of other parties.

3. The Client's Responsibilities

The Client shall:

- 3.1. Nominate a responsible representative who shall have full authority to act on behalf of the Client for all matters set out in the Offer Agreement but not to vary the terms of the Offer Agreement.
- 3.2. Advise KDA of the requirements and any subsequent changes required.
- 3.3. Supply to KDA in a timely fashion, without charge, all necessary and relevant information in the possession of the Client or any of the Client's Agents, consultants, or contractors.
- 3.4. Give decisions and all necessary instructions, timescales, the programme, the budget and the consents, or approvals necessary for the performance of the Services.
- 3.5. Sign off at agreed points during the design stage of the project.
- 3.6. Have authority to issue instructions to KDA, subject to KDA's right of reasonable objection.
- 3.7. Rely on the accuracy of such information provided by the Client as above. KDA shall not be liable for the consequences of any delays to the services arising from any failure by the Client to comply with these obligations.
- 3.8. Employ a contractor under a separate agreement to undertake construction or other works not undertaken by KDA. The Client will hold the contractor, and not KDA, responsible for the contractor's operational methods and for the proper execution of the works.
- 3.9. Where KDA is appointed as a lead or co-ordinating consultant, issue instructions only through KDA to other persons in connection with the Project covered by the Offer Agreement. KDA shall not be held responsible for instructions issued otherwise.
- 3.10. Appoint and pay any other consultants, or contractors required under separate agreements.
- 3.11. Expect that any delay in payment of fees can and is likely to result in a delay to the flow of information on projects. We reserve the right not to move onto a subsequent stage of a project where fees for previous work stages are outstanding.
- 3.12. Not deal with the contractor or contractors directly or interfere with KDA's duties or actions under the landscape contract, where a Landscape Contract is in place and we are the Contract Administrator.

- 3.13. Hold the contractor or contractors responsible for the proper carrying out and completion of construction works and for health and safety provisions on the site. It is expected that contractors/builders appointed will be competent members of their profession.
- 3.14. Not disclose any confidential information relating to KDA's business which has been received verbally or in writing from KDA or their representative unless consent is obtained from KDA or disclosure is required by law or because of a dispute arising from the Offer Agreement.

4. Appointment of Others

- 4.1. KDA will have the responsibility to co-ordinate and integrate into the overall design the services provided by any KDA-employed consultant.
- 4.2. A specialist contractor, sub-contractor or supplier who is employed by the Client and who supplies design drawings to KDA for incorporation in the works may be appointed by agreement. KDA shall not be held liable for the execution and performance of this work. KDA will have the authority to integrate and co-ordinate this design information into the overall design.

5. Assignment and Sub-Contracting

- 5.1. KDA will act on behalf of the Client in the matters set out or implied in the offer and proposal. KDA will obtain the authority of the Client before initiating any service or Work Stage.
- 5.2. Neither the Client nor KDA shall assign or transfer any benefits or obligation conferred by the Appointment of KDA without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.
- 5.3. If KDA, with agreement from the Client as in Clause 4.1, appoints sub-consultants to perform part of the Services set out in the Offer Agreement, KDA will remain responsible for the carrying out and completion of the Services in accordance with the Offer Agreement.

6. Fees

- 6.1. KDA fees shall be calculated and charged as set out in the Offer Agreement and fee schedule. The Client shall pay KDA the fee stated for the performance of the services.
- 6.2. The Client shall pay the KDA accounts, including any additional fees, expenses, disbursements or VAT in accordance with payment terms stated in the Offer Agreement /Invoice issued, save that in the event of termination or suspension of the commission, the KDA shall be entitled to payment of a reasonable proportion of the interim payment or at the agreed hourly rate, whichever is applicable, for all work carried out to the date of termination or suspension and not previously the subject of an invoice for interim payment.

- 6.3. Payment terms: Payment shall become due on submission of KDA's invoice thereafter and the terms shall be: -
- i) Payable within 30 days for all contracts;
 - ii) Made without being subject to any delay whilst awaiting planning permission or approval.
 - iii) Calculated from the date of issue of invoices for work (not receipt).
 - iv) Clearly stated on any invoice.
- 6.4. The Client is responsible for the separate payment of Consultant or Specialists for each project. We will advise you of the fee at the appropriate stage of the project.
- 6.5. We also reserve the right to place any debt into the hands of a debt recovery agency following failure to pay within the specified period.
- 6.6. KDA reserves the right not to continue with Services for the next stage of the project until the fee for the previous stage of the project has been paid by the Client. KDA also reserves the right not to proceed with work on a separate project, where the fees/or proportion of same for another project with the same Client remain unpaid.

7. Additional Work

- 7.1. All additional work resulting from delays, disruption or reasons beyond their reasonable control will incur additional costs in respect of the extra work, resources or subsequent effects of the delay or disruption.
- 7.2. Additional fees shall be payable at the contracted rate if revisions or redesigns are required, and/or extra expenses incurred, including:
- i) Requests to amend layouts, details and design for reasons beyond their control.
 - ii) Requests to redesign due to changes in site layout.
 - iii) Requests to redesign due to changes in works on site.
 - iv) Requests to redesign due to reflect actual as-built status.

8. VAT, Invoicing and Expenses

- 8.1. All sums due in connection with the appointment are exclusive of value added tax, the amount of which shall be paid by the Client to KDA at the prevailing rate and in the manner prescribed by law.
- 8.2. VAT will be charged at the standard rate at the time of invoice and is applicable to all our fees.
- 8.3. We will submit an invoice on account for the fees and any expenses and disbursements due [plus VAT] monthly, or at completion of each work stage whichever is sooner.
- 8.4. The Client shall reimburse expenses and disbursements as itemised on Invoices.
- 8.5. If supplementary visits to those originally quoted are required, these will be subject to a charge based on an hourly plus mileage rate.

- 8.6. Any additional expenses incurred will be quoted at the time they are instructed, required, or raised, such as OS maps, historic mapping, printing, licences, promotional material etc.

9. Disbursements

- 9.1. KDA does not include for the fees of any specialist advisers and reports i.e. arboricultural reports, protected species survey. KDA will advise the Client of the requirements for these during the scheme design and detail design stages of the project.
- 9.2. KDA will obtain fee proposal quotes on the Client's behalf and forward these to the Client for approval, when these are required. The appointment of any consultant is an agreement between that consultant and the Client directly.
- 9.3. KDA shall keep and make available on request records of any expenses and disbursements to be reimbursed at net cost and/or of time spent on Services charged on a time basis.
- 9.4. If you require time records to be kept on any projects, this needs to be advised at the outset of a project. We will record any time records where this service is requested.

10. Copyright and Licence

KDA owns the copyright in the drawings and documents (including material in electronic format) produced in performing the Services.

- 10.1. The Client shall have a licence to copy and use the drawings only for purposes related to this Project providing that all fees and/or other amounts due are paid in full.
- 10.2. The Client will be entitled to use documents and drawings in executing the works for which they were prepared by KDA provided that:
- i) All fees due to KDA have been submitted or paid;
 - ii) The entitlement relates only to that site or part of the site for which the design was prepared;
 - iii) The entitlement applies to the design, maintenance, and management of the works.
- 10.3. Drawings produced for one Client are not transferable to another Client as our Appointment would rest with the original client.
- 10.4. In the event of the Client being in default of payment of any fees or other amounts due, KDA will revoke the licence herein granted. KDA shall not be liable for the use by any person of such drawings or other documents for any purpose other than that for which the same were provided by KDA.
- 10.5. Neither party shall disclose to any other person any private or confidential information concerning the business of the other party unless so authorised by the other party.

11. Liability and Insurance

- 11.1. KDA shall maintain professional indemnity insurance with a limit of indemnity not less than as stated and for the period specified in the Offer Agreement. A Broker's Letter confirming the insurance cover shall be supplied by KDA for inspection by the Client if requested.
- 11.2. KDA may, subject to negotiation, enter collateral warranty agreements where requested in favour of the first funder, first purchaser and first tenant as set out in the Offer Agreement provided that such warranties give no greater benefit to the beneficiaries than is given to the Client.
- 11.3. KDA may, subject to negotiation, enter into novation agreements where requested to provide Services to a contractor appointed by the Client to complete the design and construction of the Project as set out in the Offer Agreement and appended to this providing all due fees and other amounts have been paid.
- 11.4. Other than the rights conferred on the third party in Clause 5.1 and Clause 11.2 nothing in the Offer Agreement is intended to confer any right to enforce any of its terms on any person who is not party to it.
- 11.5. Nothing in the agreement shall require KDA to provide advice or services in connection with the presence of or risk of contamination or pollution by harmful substances. The Client shall retain sole responsibility for determining what, if any, investigations, and actions shall be taken in relation to such substances and shall commission such professional advice as they consider necessary.

12. Suspension and Resumption of Service

- 12.1. The length of notice for suspension should be agreed in writing at the outset. The Client may suspend KDA's appointment in whole or in part, the notice given being in accordance with the agreed timing and in writing.
- 12.2. KDA will give immediate notice in writing to the Client of any situation arising from force majeure which makes it impractical to carry out any of the agreed services and agree with the Client a suitable course of action.
- 12.3. Following the notice in accordance with clause 12.3 if no instruction has been received within 6 months, KDA shall make a written request for instructions. If no instruction is received within 30 days, the appointment shall be treated as terminated.
- 12.4. If the Client fails to make payment in accordance with the Offer Agreement and fee proposal and no effective notice to withhold payment has been given, KDA may, following 7 days' notice setting out the grounds for suspension, suspend the performance of his obligations under the agreement until payment is received.

13. Termination

- 13.1. KDA's appointment may be terminated by either party by following the procedure where this is permitted by the appointment.
- 13.2. If death or incapacity of a sole practitioner stops KDA from carrying out the agreed duties under this appointment, it shall be terminated. As soon as all outstanding fees have been submitted or paid, the Client will be entitled to use all data prepared on the project subject to the provisions in respect of copyright in accordance with clause 10.

14. Dispute Resolution

- 14.1. Any difference or dispute arising from a written appointment under this Agreement may be settled by the Client and KDA through negotiation or mediation if suitable.
- 14.2. In the event of a dispute arising under the agreement, either party may give notice at any time to the other of his intention to refer the dispute to adjudication.
- 14.3. An adjudicator shall be appointed by agreement between the parties within 2 working days of receipt of notice under clause 14.2 or, failing agreement, within 7 days of the said notice by the President or a Vice-President of the Landscape Institute. The adjudicator shall conduct the adjudication in such manner as they consider fit, having regard to the Construction Industry Council's Model Adjudication Procedure, and subject to the following matters:
- i) Within 7 working days of notice under 14.2 the parties shall agree and provide to the adjudicator a joint statement of undisputed facts (so as to reduce the area of dispute to a minimum).
 - ii) The adjudicator shall act impartially and shall reach a decision within 28 days of referral of the dispute to him or such longer period as the parties may agree.
 - iii) The adjudicator shall be entitled to extend the period of 28 days by up to 14 days with the consent of the party giving notice under clause 14.2.
 - iv) The adjudicator shall be entitled to take the initiative in ascertaining the facts and the law.
 - v) The parties shall accept the adjudicator's decision as binding upon them until such time as the dispute is finally resolved in accordance with a ruling under 14.1 or by agreement; alternatively the parties may agree to accept the decision of the adjudicator as finally determining the dispute;
 - vi) The adjudicator may allocate between the parties the costs relating to adjudication, including the fees and expenses of the adjudicator.

15. Electronic and Paper Documents

- 15.1. Unless the Client withdraws consent, KDA will communicate with the Client and others, where appropriate, by email, but cannot be responsible for the security of correspondence sent by these means. It is The Client's responsibility to check that an incoming email and attachments (if any) do not contain viruses.
- 15.2. After completing the Client project, KDA are entitled to keep all papers and documents whilst there is money owing to KDA for charges and expenses. Once all charges are paid, KDA can send the Client the originals of any important documents for safe keeping. KDA will only retain electronic copies of any drawings and documents after this time.

16. Revisions to the Conditions of Appointment

The agreement between Client and KDA is deemed to allow for revisions due to changing circumstances. In long-term commissions such changes will probably be due to unforeseen factors or matters beyond the control of KDA at the date of the appointment.

17. Governing laws England and Wales

The application of these conditions shall be governed by the laws of England and Wales.

18. Privacy Policy

The KDA Privacy Policy covers any data collected, how it is used, disclosed, transferred and stored. This is published at www.kearydesign.co.uk

19. Contacting Us

If there are any questions about our any of our Terms, Conditions or the Services we are providing you may contact the practice at:

Keary Design Associates
The Studio, 46 Stretton Road, Great Glen,
Leicester, LE8 9GN
E. info@kearydesign.co.uk

Your continued instructions to us will amount to an acceptance of these terms and conditions.