

**IMPORTANT:** This document contains a summary of the principle issues covered by the Interiors Association Template for Conditions of Appointment which is available to members of the Interiors Association. Please note that this document is intended only to highlight certain issues of interest and not to be comprehensive, nor to provide legal advice, which should always be sought in relation to the preparation of Conditions of Appointment.

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## Interiors Association

### Commentary to the Conditions of Appointment

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#### Important Note

Please note that this template is designed to assist you in designing a contract, terms and conditions and/or conditions of appointment to suit your own particular circumstances. It is not intended to constitute legal advice. You should consider each aspect of this template carefully and adopt it as necessary to suit your own circumstances. If you have any questions or concerns, please consult with your legal adviser.

#### Introduction

Every designer and architect should ensure that they have a contract, terms and conditions and/or conditions of appointment in order to ensure that they have a legally binding agreement in place. It is essential that both they and their client are familiar with the exact terms and conditions of the contract, what obligations arise for either party, including when payments are due and what consequences are provided for if the conditions of the contract are not fulfilled by either party.

#### Specifications

It is important that reference is made to any documentation, such as specifications and technical drawings that are to be provided within the terms of the contract. If they are not, there is then a risk that they are not covered or that the parties may have different understanding of what exactly is to be achieved and delivered as part of the project.

#### Content

Set out below is a non-exhaustive list of some of the issues that should be covered in the Conditions of Appointment, the details of which you will need to consider and insert appropriately into every client contract -

- ✎ Pricing and payment terms;
- ✎ Project Timeframes
- ✎ Breach and delays, and the consequences of such breach or delay
- ✎ Suspension and/or termination in the event of non-payment or late payment
- ✎ Warranties and carveouts from liability;
- ✎ Copyright and intellectual property rights;
- ✎ Client obligations

## **Displaying Your Conditions of Appointment**

The Conditions of Appointment should be made known to and made available to all clients by including them in any fee proposals or tenders. It is recommended that all clients receive a copy of the Conditions of Appointment, whether by letter, hand or email. To ensure that clients actually read the Conditions of Appointment they should, ideally, be asked to return a signed copy to your office. Any amendments to the Conditions of Appointment should be brought to your client's attention at the earliest possible opportunity, although it may not be possible to enforce any changes retrospectively. If you have a website a link to your Conditions of Appointment or a general summary of same should be prominently displayed.

## **Assumptions**

This template has been prepared based on the following assumptions about you and your organisation/company and your contract, terms and conditions and or conditions of appointment:-

- You have read our commentary;
- You are conducting business in Ireland and are subject to Irish law;
- You are dealing with customers in Ireland;

If the above assumptions do not apply to you, you should not attempt to use this template to produce your own contract, terms and conditions and/or conditions of appointment.

Please note that you should consult your legal advisor regarding specific issues such as intellectual property rights, liability issues, data protection, data transfers, or contracts with clients who are outside Ireland and therefore may not be subject to Irish Law.

\_\_\_\_\_ (date)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(client's full name and address).

RE: \_\_\_\_\_  
(project description and address).

Dear

Thank you for inviting us to act as your \_\_\_\_\_ (professional title) for the project referred to above.

We have agreed that the attached Schedule of Services, Schedule of Fees, and Terms & Conditions will be the basis of our agreement, along with the terms set out in this letter.

We confirm that we will maintain a professional indemnity limit of \_\_\_\_\_ (insert relevant figure) during the course of your project.

We confirm that the effective date of the agreement, that is the date on which we will commence performance of services, will be \_\_\_\_\_ (start date of project).

If these arrangements are acceptable to you please sign the agreement clause below, initial each of the attachments of the Schedule of Services, Schedule of Fees and Terms & Conditions and return all the documents to us. We will then countersign them and send you a copy for your records

Sincerely yours,

\_\_\_\_\_ (designer's name).

# AGREEMENT CLAUSE

I /We \_\_\_\_\_(please print name) wish to appoint

\_\_\_\_\_ (designers name) as the

\_\_\_\_\_ (professional title) on the

\_\_\_\_\_  
\_\_\_\_\_ (project description) at

\_\_\_\_\_ (project address)

I/We agree to the terms set out in this agreement which comprises of Schedule of Services, Schedule of Fees and Terms & Conditions.

This appointment was made on

\_\_\_\_\_ day of \_\_\_\_\_ (month) \_\_\_\_\_ (Year)

Signed \_\_\_\_\_ (client)

Signed \_\_\_\_\_ (designer)

# SCHEDULE OF FEES

**Charges -** (Draw line through unwanted clauses)

- All of the services above will be charged at a rate of \_\_\_\_\_ per hour plus vat at \_\_\_\_\_%
- A retainer of \_\_\_\_\_ is due before the Interior Stylist / Consultant / Designer / Architect will commence work on the project.
- Payment for services are due within \_\_\_\_\_ days of receipt of invoice

If Construction Management Services form part of the Schedule of Services the retention fund will be \_\_\_\_\_

## **Meetings / Showroom Visits / Workshop Visits / Site Vists**

All of time expended in this capacity will be charged at a rate of \_\_\_\_\_ per hour plus vat at \_\_\_\_\_%

## **Travelling time & travelling expenses**

Travelling time will be charged at a rate of at a rate of \_\_\_\_\_ per hour plus vat at \_\_\_\_\_%

Travelling expenses will be charged as incurred.

Mileage will be charged at a rate of at a rate of \_\_\_\_\_ per mile

## **Printing**

- |                     |          |
|---------------------|----------|
| • B&W A4 document   | Per page |
| • B&W A4 drawing    | Per page |
| • B&W A3 drawing    | Per page |
| • B&W A2 drawing    | Per page |
| • B&W A1 drawing    | Per page |
| • B&W A0 drawing    | Per page |
| • Colour A4 drawing | Per page |
| • Colour A3 drawing | Per page |
| • Colour A2 drawing | Per page |
| • Colour A1 drawing | Per page |
| • Colour A0 drawing | Per page |

## **Expenses**

- Statutory fees; Planning Application & Fire Safety Certificate Application charges
- Planning Application Newspaper Advertisement
- Ordnance Survey Maps
- Other miscellaneous expenses

# SCHEDULE OF SERVICES

Detailed project description with regard to the scope of the project, services provided and deliverables (drawings, specifications etc.) to be provided.

SPECIMEN

# TERMS AND CONDITIONS

## Definitions

The term Project Management as used in the agreement is defined as the monitoring and reporting on the progress of the project and all parties involved.

The term Contract Management as used in this agreement is defined as the administration of the building contract that the client has entered into with the contractor.

The term Construction Management as used in this agreement is defined as management of the building work.

The term Site as used in this agreement is defined as the site or location where the project work is to be undertaken, installed and or delivered.

## Interior Stylist / Consultant / Designer / Architect's duties

The Interior Stylist / Consultant / Designer / Architect will:

- exercise reasonable skill and care on the project
- make only such alterations, additions and omissions to the agreed drawings and specifications as s/he considers are in the client's interest and in compliance with the client's brief, and immediately inform the client of such alterations, additions, or omissions and of their cost and programme implications.
- Notify the client immediately of any need to vary the services, timetable and/or fees of the agreement.
- If the Interior Stylist / Consultant / Designer / Architect is providing project management services they will;
  - keep the client informed of any significant increases in cost and programme during construction,
- If the Interior Stylist / Consultant / Designer / Architect is providing Contract Management services they will;
  - administer the building contract as the client's agent, while acting impartially between the client and contractor.
  - visit the site at intervals s/he considers appropriate to the stage of construction to inspect the progress and quality of the work and to determine that the work is being carried out generally in accordance with the contract documents. Frequent or constant inspection does not form part of the standard services and it is the contractor's responsibility to supervise the building work.
- If the Interior Stylist / Consultant / Designer / Architect is providing Construction Management services they will :
  - Ensure that the portion of property within their possession in a clean tidy condition and clear away their rubbish at the end of the day
  - Be responsible for the reasonable security of the portion of property within their possession,
- If the Interior Stylist / Consultant / Designer / Architect is supplying furniture, fittings and equipment (FF&E) they will :
  - Assign the client all available guarantees relating to FF&E,
  - Take all reasonable steps to ensure that all supplied FF&E are of reasonable quality and fit for their purpose and delivered to site in good order
  - Pay the amounts due to suppliers of FF&E

# TERMS AND CONDITIONS

## Client's duties

- The client will provide the Interior Stylist / Consultant / Designer / Architect, free of charge, with accurate information and approvals as necessary for the proper and timely performance of the services,
- The client will nominate a single point of contact who shall exercise the powers of the client and through whom all instructions to the Interior Stylist / Consultant / Designer / Architect shall be given,
- If it is a commercial project the client will notify the Interior Stylist / Consultant / Designer / Architect of industry specific legislation and of any specific or bespoke requirements or problems that may affect the project,
- The client will notify the Interior Stylist / Consultant / Designer / Architect of any need to vary the services, timetable and/or fees of the agreement,
- Unless the Interior Stylist / Consultant / Designer / Architect is providing Construction Management Services, the client will either 1) employ a main contractor under a separate agreement to undertake building or other works or 2) employ direct labour and appoint a contracts manager to manages these contracts,
- The client will hold contractors not directly employed by the Interior Stylist / Consultant / Designer / Architect responsible for the following in accordance with the terms of their contracts
  - the supervision of construction work,
  - operational methods,
  - techniques,
  - sequence of procedures,
  - safety precautions,
  - proper execution
  - completion on time of the building work
  - any design work undertaken by the contractors,
  - remedying any defects.
- The client will not hold the Interior Stylist / Consultant / Designer / Architect responsible for decisions given by official, quasi-official or statutory bodies in relation to planning permissions or fire safety certificate approval,
- The client will not hold the Interior Stylist / Consultant / Designer / Architect responsible for the solvency or competency of any other appointed person whether or not such an appointment was made on the advice of the Interior Stylist / Consultant / Designer / Architect,
- The client will not hold the Interior Stylist / Consultant / Designer / Architect responsible for the accuracy of any survey made by the Interior Stylist / Consultant / Designer / Architect unless an accurate survey was specifically commissioned as part of the Schedule of Services,
- The client will not consider any cost or time estimates prepared by the Interior Stylist / Consultant / Designer / Architect as offers unless submitted as tenders,
- The client will not engage any consultant or subcontractor to work on the project without consulting the Interior Stylist / Consultant / Designer / Architect as this may have implications for the building contract,
- The client will make separate appointments for Project Supervisor (Design Stage) and Project Supervision (Construction Stage),

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- The client will make separate appointments for other consultants and confirm, in writing, the services to be performed by such persons so appointed,
- The client will not request design changes that are in conflict with current legislation or best practice,
- The client will have paid any previously appointed consultants in full for any work undertaken that relates to the project, the subject of the contract.
- The client will ensure, warrant and indemnify that any and all use of materials and designs furnished by the client are properly and legitimately permitted and paid for and do not infringe any third party rights.
- The client will take full responsibility and liability for all FF&E delivered to the portion of the property not in possession of the Interior Stylist / Consultant / Designer / Architect or contractor,
- As the project requires, the client will engage and pay separately any specialist consultants, sub-contractors or suppliers. The client will hold such persons (and not the Interiors Stylist/Consultant/Designer/Architect) responsible for the performance of any elements of the project designed by them.
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- If the Interior Stylist / Consultant / Designer / Architect is providing Construction Management services, the client will allow the Interior Stylist / Consultant / Designer / Architect :
  - To take possession of those parts of the premises where the Interior Stylist / Consultant / Designer / Architect's building work is being carried out
  - Reasonable space to store materials and tools as necessary
  - Use of toilet and washing facilities, heating, water and electricity
  - To carry out work from Monday to Friday inclusive, between 08:00am – 18:00 hours, unless different working hours and days are confirmed in writing.
- The client will not knowingly allow other people access to the portion of the premises in the possession of the Interior Stylist / Consultant / Designer / Architect
- The client will insure the Interior Stylist / Consultant / Designer / Architect and himself against the risk of loss or damage to the existing structures, any contents and to the building work being managed by the Interior Stylist / Consultant / Designer / Architect. He will insure all unfixated materials against the risk of loss or damage by fire, flood, explosion, storm, tempest, bursting or overflowing water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, riot and civil commotion.
- The client shall maintain public liability insurance for death or injury to people or damage to the portion of the property not in possession of the Interior Stylist / Consultant / Designer / Architect
- If the Interior Stylist / Consultant / Designer / Architect is supplying FF&E the client shall:
  - Notify the Interior Stylist / Consultant / Designer / Architect of any defects in FF&E that becomes apparent within 48 hours of the said goods having passed into their possession
  - notify the Interior Stylist / Consultant / Designer / Architect of any defects in FF&E that become apparent during use, unless the fault is caused by accident or fair wear and tear, within the liability period stated in this agreement

# TERMS AND CONDITIONS

- reimburse the Interior Stylist / Consultant / Designer / Architect for any additional storage or transportation costs arising from programme delays not caused by the Interior Stylist / Consultant / Designer / Architect,

## Fees and expenses

- The Interior Stylist / Consultant / Designer / Architect may cease work on the project if invoices are outstanding,
- In accordance with the Late Payments in Commercial Transactions Regulations 2002, invoices that remain unpaid after 30 days from date of issue will be subject to interest of 7% plus the European Central Bank's Main Refinancing Rate, calculated on a daily basis
- If the Interior Stylist / Consultant / Designer / Architect is providing Construction Management services
  - the final instalment of not less than the retention fund set out in the Schedule of Fees shall become due after the Interior Stylist / Consultant / Designer / Architect notifies the client that all of the building work within their remit is complete.
  - The full value of the retention fund becomes due 6 months after this agreement has been determined and no faults have become apparent.
- Percentage charges are calculated on the VAT exclusive value of the building work, including fitting-out and loose furniture, with which the Interior Stylist / Consultant / Designer / Architect is involved. Before tenders are obtained, that value is the Interior Stylist / Consultant / Designer / Architect's estimate of cost. After tenders are obtained, the value is the tender(s) recommended to the client. After building work is done, the value is the total construction cost, i.e. the final account(s) for the work less VAT,
- Where no building contract is to be entered into, the costs of the work will be based on the calculations of an independent quantity surveyor as agreed upon by both Interior Stylist / Consultant / Designer / Architect and client.
- Time charges are based on hourly rates for principals and other professional and technical staff. The Interior Stylist / Consultant / Designer / Architect will keep records of time spent on any services performed on a time charge basis, and make such records available to the client upon request.
- The estimates of costs that will be incurred at Scheme Design Stage are provisional and subject to recalculation on the basis of the actual cost. Where the Interior Stylist / Consultant / Designer / Architect is being reimbursed for costs incurred, s/he will maintain records of all such costs, and make such records available to the client upon request.
- Where for any reason the Interior Stylist / Consultant / Designer / Architect provides only part of the services specified in the services schedule, fees shall be calculated as described in the schedule of rates for completed work stages.

## Omitted work and Changes

- The Interior Stylist / Consultant / Designer / Architect will be entitled to charge in accordance with the Schedule or Rates for all work executed in-line with the original brief. If at any stage, part of the design is omitted, work completed and/or unavoidably scheduled to date will be charged ad valorem,
- The Interior Stylist / Consultant / Designer / Architect will also be entitled to charge at hourly rates for any changes at the client's request or necessitated by client changes of designs which the client has previously approved.

## Interior Stylist / Consultant / Designer / Architect's Liability

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The Interior Stylist / Consultant / Designer / Architect's liability shall extend:

- only to the maximum period of statutory limitation beginning on (a) the Interior Stylist / Consultant / Designer / Architect's issue of the final invoice, or (b) the termination of the commission, or (c) date of commencement, (whichever is earlier);
- to the cost of making good any construction defects which are established as being caused by the Interior Stylist / Consultant / Designer / Architect's negligence or breach of contract, but not to the cost of making good any loss consequential on such defects;

All other liability of whatsoever nature, including consequential loss, is expressly excluded to the fullest extent permitted by applicable law.

## Copyright

Copyright in all drawings and documents prepared by the Interior Stylist / Consultant / Designer / Architect and in any work carried out from those documents shall remain the Interior Stylist / Consultant / Designer / Architect's property. The Interior Stylist / Consultant / Designer / Architect retains any and all other intellectual property and similar rights of whatsoever nature (whether capable of registration or not) including moral rights. The Interior Stylist / Consultant / Designer / Architect grants the client a licence to use, for this project only, the designs that the client has commissioned and in the manner permitted, provided as a condition precedent that the client has paid the charges to the appropriate Work Stage.

In the event of the client being in default of the payment of any fees or other amounts due, the Interior Stylist / Consultant / Designer / Architect may suspend further use of the licence (if any) on giving 7 days notice of the intention of doing so. Use of the licence may be resumed by the Interior Stylist / Consultant / Designer / Architect on receipt of outstanding amounts.

## Confidentiality

Neither the client nor the Interior Stylist / Consultant / Designer / Architect shall disclose to any other person information identified in writing as confidential, unless reasonably necessary

- for the performance of services
- in order to take professional advice in relation to the agreement or the services
- in order to obtain/maintain insurance cover as required by the agreement
- because of disputes arising out of or in connection with the agreement
- as required by law

## Suspension and termination

The client may suspend the Interior Stylist / Consultant / Designer / Architect's performance of any or all of the agreed services, and either party may terminate the Interior Stylist / Consultant / Designer / Architect's appointment, on the expiry of at least 30 days notice in writing.

On suspension or termination of the Interior Stylist / Consultant / Designer / Architect's appointment, s/he will be entitled to be paid for all work completed up to that time. If any period of suspension arising from a valid notice exceeds 6 months the Interior Stylist / Consultant / Designer / Architect shall request the client to issue instructions to proceed with the suspended service or services. If written instructions have not been received within 30 days of such a request the Interior Stylist / Consultant / Designer / Architect shall have the right to treat this agreement as determined.

Where the client suspends or terminates the appointment, the Interior Stylist / Consultant / Designer / Architect will be entitled to an allowance for loss of profit, to be one tenth of the agreed

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amount that would have been charged had the Interior Stylist / Consultant / Designer / Architect been retained for the subsequent Work Stage.

In the event of suspension or termination for whatsoever reason and where the Interior Stylist / Consultant / Designer / Architect has purchased or arranged for the purchase of goods and services intended for the project and or client, the client shall be fully responsible to the Interior Stylist / Consultant / Designer / Architect for the full cost of such goods and or services (including where orders cannot be reasonably cancelled), including delivery, insurance, storage and related expenses, and shall immediately pay the Interior Stylist / Consultant / Designer / Architect upon demand. No such goods and or services shall pass to the client, nor title or entitlement to same, until payment in full has been received by the Interior Stylist / Consultant / Designer / Architect for such goods and or services and/or the services of the Interior Stylist / Consultant / Designer / Architect. The Interior Stylist / Consultant / Designer / Architect shall be entitled to set off any outstanding service fees for and against any such goods and services.

In the event of non payment, or repeated delayed payment, the Interior Stylist / Consultant / Designer / Architect shall be entitled to terminate and/ or suspend the performance of services and/ or the delivery of goods and services until payment has been made. A decision whether to recommence work and/or continue to supply goods to the client is at the discretion of the Interior Stylist / Consultant / Designer / Architect.

Either party can determine the agreement with immediate effect upon the insolvency, incapacity or bankruptcy of the other.

On determination of the performance of the Interior Stylist / Consultant / Designer / Architects services:

- the client will allow the Interior Stylist / Consultant / Designer / Architect access to the site to collect all equipment and items belonging to him/her, and
- the designer will return all goods belonging to the client and all deliverables listed in the Schedule of Services subject to the terms of the licence and payment of the Designers reasonable printing and/or photocopying charges

## Disputes

The client and the Interior Stylist / Consultant / Designer / Architect agree to seek to amicably resolve any disputes or misunderstandings between them. The parties agree at the instance of either party to submit to mediation. In the event of no agreement by the parties within three (3) weeks of an issue arising, a mediator may be appointed by the President of the Law Society of Ireland. The costs for same shall be borne by the parties in such manner as the mediator shall determine.

## Queries / Complaints

Any and all queries and /or complaints must be notified and specified in writing to the Interior Stylist / Consultant / Designer / Architect within fourteen (14) days of the problem arising, or fourteen (14) days of the services being completed, whichever is earlier.

## Pricing Information

Prices and quotes only remain valid for a period of thirty (30) days from the date of issue unless otherwise specified. Third party suppliers may amend and/ or update their prices within such period. This is outside the control of the Interior Stylist/Consultant/Designer/Architect and they cannot be held responsible for such changes. Similarly currency transfers and exchange controls are also outside the control of the Interior Stylist / Consultant / Designer / Architect and they cannot be held responsible for such fluctuations.

## No Deduction

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The client shall make all payments in euro and without deduction, withholding, counterclaim and /or set off and other charges.

## **Warranties**

The Interior Stylist / Consultant / Designer / Architect warrants that the services will be provided with due skill, care and diligence and that any materials used, subject to specifications, descriptions and third party warranties, will be reasonably fit for purpose, and subject to the descriptions and requirements specified.

This sets out the entire warranty of the client and the Interior Stylist / Consultant / Designer / Architect shall have no liability other than as set out above, whether under these conditions of service or on any other basis including liability in contract, tort or otherwise.

The Interior Stylist / Consultant / Designer / Architect shall not under any circumstances be liable by reason of any representation, warranty, condition or other term, or any duty of common law, or under the express terms of these conditions of service or supply, for any consequential, special, incidental or punitive loss or damage (whether loss of current or future profits, saving or loss of enterprise value or otherwise) and whether occasioned by the negligence of the Interior Stylist / Consultant / Designer / Architect, its employees, servants and or agents or otherwise, even if advised of the possibility of such loss or damage.

Any and all liability shall be capped at the amount of the fees received by the Interior Stylist / Consultant / Designer / Architect in the immediately preceding twelve (12) months (less any deposits, fees on account, advance payments, payments for goods and third party services).

## **Sub contracting**

The Interior Stylist / Consultant / Designer / Architect may at its discretion delegate or sub contract any of its duties in the provision of the services.

## **Force Majeure**

The Interior Stylist / Consultant / Designer / Architect shall not be liable for any breach, non performance or delayed performance resulting from causes beyond its reasonable control including but not limited to fires, floods, storms, strikes, telecommunications shortages or outages, electricity supply, terrorist event, acts of God, strikes, embargoes, wrecks, delays I transportation, transportation, inability to obtain supplies and materials, legal requirements and regulations changing, third party jurisdiction laws and regulations, third party delays and/ or changes in requirements and /or specifications.

## **Law**

The parties agree to submit all issues and disputes, in accordance with the laws of Ireland, to the exclusive jurisdiction of the Courts of Ireland.