

1. Introduction

Our current conditions of business apply to all services supplied by us, Alias Smith & Garratt Ltd, trading as Smith & Garratt, to you, the client, subject to any Letter or E-mail of Engagement or other written agreement. No work will be undertaken until fees and conditions of business have been agreed in writing. To instruct us you should sign and return the accompanying confirmation page within 60 days of issue. Our conditions of business are updated from time to time and the latest issue always represents our prevailing conditions of business; for the latest issue contact the office or visit our website.

2. Responsibility for Payments

Any reference to “we”, “us” or “our” means Smith & Garratt; any reference to “you” or “your” means the person signing, who will be personally responsible for – and guarantees – payment of our fees and outgoings, even if the subjects of the business matter are held by a different person, legal person or entity. If more than one party is to be responsible for payments, the confirmation page should be signed by all parties and the names and addresses of the additional guarantors must be given, whereupon the liability for payments will be joint and several. Even where a third-party is expected to contribute to fees – for example the acquiring authority in compulsory purchase cases – the person(s) signing are primarily responsible. Payment(s) to us cannot be conditional upon your receipt of third-party contribution(s) and may not be withheld or delayed because of non-payment by a third party.

3. Scope of Work & Special Requirements – Notice Periods, Tax Advice, Requirements for Accuracy, Third-Party Reliance

The scope of work will be as set out in the Letter or E-mail of Engagement. We will exercise reasonable skill and care in the delivery of our services. Unless expressly requested by you and confirmed by us in writing our work will not include, and we do not warrant, monitoring or reminding you of warranty periods, expiry dates, or other notice periods; tax advice; the accuracy of measurements. If you intend to rely on us and/or our work for any of the foregoing – including if you have a special requirement for accuracy, for example in the measurement of land or buildings – you must notify us in advance your special requirements and we will respond in writing. Our reports and advice should only be used for the relevant purpose; no responsibility whatsoever is accepted to any third party who may seek to rely on work done for you unless we have accepted responsibility in writing.

4. Instructions

We can act only on information and instructions given to us. You should not assume that we have knowledge of any factual matters. If we are acting for more than one person (e.g. husband and wife or partners) we may take instructions from one person on behalf of the other(s) and all will be fully responsible for any actions taken or fees incurred on a joint-and-several basis. You can instruct us verbally, by e-mail or in writing; we may ask for formal written confirmation of verbal instructions. If we perceive a conflict of interests may exist, we will inform you in writing and may suggest modification of instructions or decline the instruction.

5. Calculation of Fees

Fees will be calculated on the basis set out in a Letter or E-mail of Engagement or other writing. Where a fixed-fee quotation has been given the fee will be as quoted. In all other circumstances, save commissions* and scale-paid compensation work†, the fee will be calculated according to time-charges applied to the time spent working on the business matter and will be invoiced periodically. Our charges are reviewed not less than annually; the current tariff is set out at the end of this document. We will endeavour to inform all current clients of any change to our time-charges; the prevailing rates are available from our office. Chargeable time is counted in units of six minutes and includes time spent on reviewing and drafting documents, advising, reporting, dealing with correspondence, telephone calls, site visits, preparing for and attending meetings, making notes of meetings, research, attending formal proceedings, waiting and travelling. Any limits or caps to time-charges will be set out in the Letter or E-mail of Engagement or otherwise confirmed in writing. It is not always possible to quote precise fees because the amount of work required on a business matter is often not known at the outset; accordingly, any estimate of fees will not be binding unless it is expressly stated to be a fixed or capped fee quotation. We reserve the right to raise interim fee notes where appropriate, particularly where a job is delayed or prolonged by matters outside our control. If you require additional work to be performed outwith the scope of a quotation you will be required to pay for the time taken; we will, if requested, provide an estimate of that additional fee. Our fees are payable in full, irrespective of ‘taxation’ by a judicial body or inability to recover from another party as may have been anticipated at the outset. Unless otherwise stated in the Letter or E-mail of Engagement or other writing, planning consultancy is undertaken at your risk and our fee is not conditional upon a successful outcome. We reserve the right to charge an appropriate fee for abortive work and/or abortive transactions. We reserve the right to charge an appropriate cancellation fee where you reduce or end our appointment after we have started work.

* Commission arrangements are outlined at clause 9 (below).

† Compensation work will be time-charged unless we specifically elect to adopt scale fees.

6. Outlays and VAT

You are liable to reimburse immediately all outlays incurred by us on your behalf, such as travel and subsistence expenses, maps and plans, large copying, telephone calls, printing, postage, other materials costs, third party fees, local authority fees, advertisements, &c. We may request an advance payment to cover expected fees and outlays. In addition to any fees and outlays, whether quoted or estimated or not, VAT is charged at the prevailing rate.

7. Payment of Fees and Outlays

Fees and outlays become payable upon issue of a fee note or invoice and should be paid in full, in Sterling, within 7 days of issue of the fee note or invoice.

- We may issue invoice(s) and/or require payment prior to undertaking work, issuing reports, submitting applications, &c. Any fees received prior to the delivery of services may not be considered to be client's money and will not fall to be treated under the RICS Client Money Protection Scheme.
- We may deduct from any monies held or received for you any fees and outlays due to us.
- We reserve the right to charge interest on fees, outlays and VAT if not paid within thirty days of demand, at the statutory rate (currently 8% over base), on a compounding basis.
- If any payment is overdue, we may suspend work until payment is received in full, failing which we may withdraw from acting for you.
- In the event of a dispute as to the amount of our fees, such sum as is not disputed shall be paid as outlined above pending resolution of the dispute.
- The costs of debt recovery, and/or associated administration costs, are added to outstanding debts.

8. Clients' Money

Smith & Garratt does not handle or hold money on behalf of clients.

9. Property Sales and Commission

If the business matter includes sale(s) of property, we will require details of your Title(s) and of the solicitor(s) acting on your behalf. You or your solicitor must advise us of all mortgages, standard securities, charges or inhibitions affecting the subject property. Commissions will be calculated on the basis set out in the Letter or E-mail of Engagement. Commissions on sales of real property in Scotland fall due on the conclusion of missives, in England upon exchange of contracts. It is an essential condition of our engagement as selling agents that your solicitor is authorised to remit commission and other sums due direct to us. If you have instructed any other agent it is your responsibility to check whether you will be liable to pay fees or commission to them as well as to us. We will not accept commissions or other payments from third parties. Subject to there being no conflicts of interest, we are not prevented from providing services to purchasers, such as arranging finance or insurance, alterations or development post-purchase, or in connection with any other property they may have.

10. Surveyors Acting as Experts

Where supplying a surveyor to act as an Expert, we seek to comply with (i) Part 35 of the Civil Procedure Rules; (ii) Practice Direction (35) 'Experts & Assessors'; (iii) the Guidance for the Instruction of Experts in Civil Claims 2014; and (iv) RICS Practice Statement 'Surveyors Acting as Expert Witnesses' [4th edition] or 'Surveyors Acting as Expert Witnesses in Scotland' [1st edition]. Upon request, we will provide you with a Client Guide to RICS Practice Statements.

11. Provision of Advice through Firm

Services and advice supplied by us are the responsibility of Smith & Garratt and no liability shall attach to any individual, whether director, member, consultant, associate, or employee of Smith & Garratt who may have supplied or been involved in the supply of services or advice.

12. Personal Data, Money Laundering Regulations, Data Protection, Data Usage and Data Output

We may hold the minimum personal information concerning you and your affairs we consider is necessary for the purposes of providing professional services to you. We may be required to verify the identity of clients in compliance with money laundering regulations; it is your responsibility to provide us with suitable documents for this, failing which we may be prevented from acting for you. Personal information is held in accordance with the eight data protection principles set out in the Data Protection Act 1998 and in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation). You can discover what personal data we hold about you by making a formal written enquiry accompanied by £10 and sufficient information to assure us of your true identity. We will only share the data we hold with third parties as required by statute or as necessary to provide the services – for example to planning and building standards authorities, to agencies such as highways and environmental agencies, to contractors tendering for or undertaking works on your behalf and, in the case of unpaid debts, to our legal advisers and debt collection agency. We will not otherwise process or share your personal data. Unless you opt-out in writing on the accompanying confirmation page, we may publish case studies, photographs, illustrations, testimonials, &c, relating to our work for you, and may use them in promoting our business. The paper and digital files we create in undertaking our work belong to us and will not be released; our output is in generally accessible file types such as E-mail, Word, Excel, JPG, Power-Point and PDF.

13. Termination

Unless otherwise stated in the Letter or E-mail of Engagement, either you or we may end our appointment at any time. If the appointment is ended all fees due to us, including any abortive or cancellation fees, outlays, and VAT fall due for payment immediately. A cancellation fee WILL follow early termination of work undertaken on a fixed-fee basis, on scale fees, for commission, or for a share of profit. We reserve the right to retain papers, Titles, consents, &c, pending payment of any sums outstanding, whether upon termination or otherwise.

14. Complaints Procedure

We aim to provide a high-quality service to all our clients. If you are dissatisfied with any aspect of the service provided, please raise the matter as soon as possible with the Director responsible. If you are still not satisfied, write specifying your complaint and the matter will be addressed by our Board. In the event that a complaint cannot be resolved between the parties, our procedure allows for reference to the Centre for Effective Dispute Resolution (CEDR), 70 Fleet Street, London, EC4Y 1EU, UK. The parties' rights to legal remedies are unaffected. We reserve the right to charge for time spent dealing with unfounded or vexatious complaints.

15. Storage of Data, Papers and Documents

We will keep our file of papers and computer data for seven years unless otherwise stated in writing; thereafter we may destroy them. We reserve the right to charge for time spent retrieving and copying documents for you. We will not destroy documents such as Titles and original local authority consents that you specifically ask us to retain in our custody. We accept no liability for costs arising from the accidental loss or destruction of documents or data in our custody, for example (but not limited to) by theft, computer corruption, fire or other peril.

16. Limitation of Liability

Unless another limit is expressly agreed in writing with you, our liability in respect of any claim or series of related claims, whether arising from breach of contract, negligence, or otherwise (other than for personal injury or death) is limited to £500,000 and shall not include indirect or consequential losses such as economic loss, loss of profit or turnover, business or goodwill.

17. Scots Law

The provision of services by Smith & Garratt is governed by Scots law, whether or not you and/or the business matter are based in Scotland. You accept that the Scottish Courts shall have exclusive jurisdiction to deal with any dispute or matter arising between you and us.

Smith & Garratt is the trading name of Alias Smith & Garratt Ltd., a company registered in Scotland, number SC238865. The Guildhall, Ladykirk, Berwick-upon-Tweed, TD15 1XL. www.smithandgarratt.com
