Terms of Business

1.0 DEFINITIONS

1.1 The following defined words have the following meanings in this Agreement:
"Offer" means the letter of offer and any appendices and/or attachments thereto issued to the Client by the Consultant.
"Agreement" means the Consultant's letter of offer enclosing these Terms of Business, the A5ppendix to the offer, and any subsequently agreed variations to the "Agreement".
"The Client" means either the person who, or organisation or company which, accepts the Offer.
"Consultant" means Craddys.
"Services" means the services to be provided for the Client and which the Consultant identifies in the Offer.
"In writing" means any communication sent by mail or by facsimile transmission.
"Force majeure" means any circumstance or condition outside the reasonable control or influence of the Consultant, and includes any deferral in the requirement for the Services by the Client.

1.2 The headings in this Agreement do not affect its construction.

2.0 VARIATIONS

2.1 No variation of any kind to this Agreement may be made without the agreement in writing of the Client and of the Consultant.

3.0 PERFORMANCE

3.1 The Client agrees to supply to the Consultant without charge all the matters and things necessary for the performance of the Services by the Consultant, and also where necessary, to provide facilities and approvals to the Consultant.

3.2 The Consultant shall subject to the Agreement carry out the Services in the Offer and any variation to the Services.

3.3 The Client shall make payment in accordance with the Agreement.

3.4 Unless otherwise agreed in advance, approvals from the Client shall be deemed to have been given unless the Consultant is notified to the contrary within five working days of such approval having been requested.

4.0 INTELLECTUAL PROPERTY & CONFIDENTIALITY

4.1 The copyright and all other intellectual property rights in all work prepared or compiled by the Consultant in the performance of this Agreement remains vested in the Consultant but conditional upon payment of all fees and disbursements properly due the Consultant hereby issues a free licence to the Client to use such work as is supplied under this Agreement, for the purposes for which the work was prepared or compiled, always providing that such licence shall be limited strictly to the works carried out under this Agreement.

4.2 The Client agrees that any know-how, techniques, or processes carried out in the course of the Services are confidential information. The Client shall not without the prior written consent of the Consultant divulge to any party details of any confidential information disclosed by the Consultant in the performance of the Services.

5.0 LIABILITY

5.1 The Consultant undertakes to exercise reasonable skill care and diligence in performing the Services, and shall be liable only for negligent failure in performing the Services.

5.2 In respect of any matter of force majeure the Consultant shall have no liability for his failure or delay in the performance of the Services or any part of them. Where relevant, the Client shall not cease payments to the Consultant under this Agreement throughout any period or periods of force majeure.

5.3 The Client and the Consultant agree that the total liability of the Consultant arising out of or in connection with this Agreement shall not, unless otherwise agreed in writing, exceed £25,000 or ten times the fee received by the Consultant from the Client, whichever is the lesser, howsoever that liability might arise.

5.4 Notwithstanding any provision in this Agreement or the identification of any individual in this Agreement all duties obligations and liabilities arising under or by virtue of this Agreement or which may arise by virtue of common law statute or in equity from the performance of any work contemplated by this Agreement shall be owed or incurred exclusively by the Consultant and not by any employee or member (including any officer or director) of the Consultant. The Client acknowledges that no such individual owes or shall owe any such duty or obligation or shall incur any such liability to the Client and agrees that the Client will not seek to make liable any such individual for any act default omission or negligence committed by the individual whatsoever and irrespective of how such liability may arise. This clause shall not operate to exclude liability for death or personal injury to the Client where the Client is an individual or group of individuals.

5.5 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

5.6 Unless specifically noted otherwise in the letter of appointment, liability for any claim(s) arising from pollution or contamination or asbestos is excluded.

6.0 SUSPENSION AND TERMINATION

6.1 The Client and Consultant agree that without prejudice to any other rights and remedies which the Consultant may possess if the Client shall fail to pay the Consultant in full any amount properly due and payable under this Agreement by the final date for payment as defined in 7.3 the Consultant may after giving the Client seven (7) days' notice in writing of the same suspend its performance and obligations under this Agreement until payment in full occurs.

6.2 Any period during which the Consultant exercises its right to suspend its performance pursuant to 6.1 shall be disregarded in computing for the purposes of any contractual time limit the time taken by the Consultant, or any of the Consultants' sub-contractors, to complete any Services directly or indirectly affected by the exercise of such right.

6.3
(a) if fourteen days after having received written notice of a breach of the Agreement, no attempt to rectify that breach has been made; or
(a) if fourteen days after having received written notice of a breach of the Agreement, no attempt to rectify that breach has been made; or
(b) the Agreement has been affected by force majeure for at least 60 days.

6.4 In the event of termination under 6.3 of this Agreement, the Client shall pay to the Consultant the following sums:
(a) such payment as is due for the performance of the Services up to and including the day upon which notice of termination was given;
(b) such payment as is due in accordance with 5.2 above;
(c) such monies, if any, as would become due and payable by the Consultant in respect of separate arrangements entered in to by the Consultant in the performance of the Services.

6.5 In the event that the Client instructs the Consultant to carry out the Services in a way which could, in the Consultant's reasonable opinion, lead to a breach of the Environmental Protection Act 1990, the Environment Act 1995, or other Statute, the Consultant may without prejudice to any other remedy, and upon not less than 4 weeks notice, suspend for a period of up to 12 weeks the performance of the Services under this Agreement. If the Client does not, to the reasonable satisfaction of the Consultant, take steps within the period of suspension to remedy any act or instruction that may breach the aforementioned Statutes, then the Consultant may by further notice on the expiry of the period of suspension determine the Agreement forthwith.

7.0 PAYMENT

7.1 Unless noted otherwise in the Agreement, the payment provisions of the Housing Grants, Construction and Regeneration Act 1996, as amended on 1st October 2011, will apply to this agreement.

7.2 Unless noted otherwise in the Agreement, the payment due date for all Craddys invoices shall be 10 calendar days, excluding bank holidays, after the date of the invoice.

7.3 Unless noted otherwise in the Agreement, the final date for payment for all Craddys invoices shall be 28 calendar days, excluding bank holidays, after the date of the invoice.

7.4 Interest, at the rate of 4% over the base rate of HSBC Bank plc shall be added to all amounts remaining unpaid after the final date for payment.

8.0 DISPUTES

8.1 Any dispute which cannot be settled amicably shall, in the first instance, be referred to the respective Chief Executive of the Client and the Consultant who shall attempt, in good faith, to resolve the matter.

8.2 In the event of the dispute not being resolved under 8.1 above the matter shall be referred to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure current at the time of referral.

8.3 In the event of either the Client or the Consultant not agreeing with the Decision of an Adjudicator under 8.2 above, the dispute shall be referred to arbitration in accordance with The Institution of Civil Engineers` Arbitration Procedure.

9.0 PERSONNEL

9.1 No Party shall directly solicit the services of any employee, agent or representative of another Party without the prior written consent of that other Party during the term of this Agreement or for the period of six months after the termination of this Agreement. If during the term of this Agreement or for the period of six months after the termination of this Agreement any employee of one Party accepts an offer of employment made by another Party as a result of an introduction in the course of this Agreement, the Party that made the offer of employment shall pay to the other a sum equivalent to six months gross salary of the employee concerned including any monetary bonuses payable to that employee during the term of this Agreement or for the period of six months after termination of this Agreement.

10 CDM REGULATIONS & BUILDING SAFETY ACT

10.1 The CDM Regulations 2015 (the CDM regs) and The Building Safety Act 2022 (the BSA) apply to all building and construction work. Failure to comply with the CDM regs or BSA can result in criminal charges and imprisonment.

10.2 It is a requirement that the Client must be aware of its responsibilities under the CDM regs and the BSA.
Refer to http://www.hse.gov.uk/construction/cdm/2015/summary.htm and follow the appropriate link depending upon whether the Client is a commercial client or a domestic client, and https://www.gov.uk/guidance/design-and-building-work-meeting-building-requirements and follow the appropriate link depending on whether there is single or multiple clients.

10.3 The Client must appoint a Principal Designer before any works (design or otherwise) are undertaken. This appointment must be in writing. Craddys have not allowed for this service unless specifically referenced within a given proposal document.

10.4 If the Client, after following guidance in clause 10.2 and 10.3, is unclear of their duties under the CDM regulations or the BSA, then the Client should contact the Consultant or another appropriately qualified building professional to ensure without delay that the Client becomes aware of their responsibilities under the CDM regulations and the BSA.

10.5 Under the BSA compliance statements may be requested. Craddys have not allowed for the provision of such statements unless specifically referenced within a given proposal document.

11.0 APPLICABLE LAW

11.1 The Client and the Consultant agree that the construction, validity and performance of the Agreement shall be governed by and construed under English Law, and for all matters arising under, out of, or in connection with the Agreement, they shall submit themselves to the exclusive jurisdiction of the English Courts.