



ARCHITECT'S APPOINTMENT: EXISTING BUILDINGS PART 2: Conditions of Engagement

C 0 INTRODUCTION

In addition to the specific provisions of the Agreement, the parties undertake to comply with their respective obligations and rights in accordance with current laws and regulations, in particular:

- the Architecture Act 1977 amended and its decrees of application, in particular decree N° 80-217 1980 pertaining to the Architects' Code of Professional Conduct;
- the Act N° 78-12 1978 relative to liability and insurance in the construction industry in accordance with clauses 1792 and thereafter, clause 2270 of the Civil Code and clause L 241-1 and thereafter of the Insurance Code; and
- the clauses L111-1 and thereafter of the Copyright Code.

C 1 DEFINITIONS

The term "**Client**" means the physical person or legal entity for whom the service is provided and who pays the fees (directly or indirectly).

The term "**Architect**" means an architect, a registered person or an architectural office, enrolled on the register of the Ordre des Architectes to whom the Client attributes the Appointment.

The term "**Contractor**" means the Contractor or the group of Contractors to whom the Client attributes the construction work.

The term "**Renovation**" means the restoration of a building similar to the state of origin. This implies retaining the existing use of the building.

The term "**Restoration**" means the restoration, in an identical state, of a building presenting a marked architectural or historical interest.

The term "**Rehabilitation**" means general improvement or upgrading of a building in accordance with current standards (standards of comfort, electrical and sanitary standards, heating, insulation, etc.).

The term "**Restructuration**" means a rehabilitation that requires a structural modification of a building.

The term "**Transformation**" means a rehabilitation that requires a change in use or the function of a building.

The term **partial or total "Reconstruction"** means the construction of a similar building after the original has been destroyed.

The term "**Agreement**", which binds the Client and the Architect, means the "Articles of Agreement" and the present "Conditions of Engagement". These two documents, of which the articles/clauses begin respectively with letters "**A**" and "**C**", are complementary and inseparable.

The **Conditions of Engagement** determines the general conditions governing the relations between the Client and the Architect and defines the contents of each Work Stage of the Architect's Appointment.

The **Articles of Agreement** determines the specific conditions of the Architect's Appointment agreed with the Client and determines mainly:

- the name and the legal entity of the contracting parties;
- the purpose of the project;
- the scope of the Appointment attributed to the Architect;
- the conditions, the amount and the basis of his fee calculations; and
- the conditions by which the Architect satisfies his professional indemnity insurance obligations.

The Standard Form of Agreement for the Architect's Appointment: Existing Buildings was drawn up by the Ordre des Architectes.

C 2 GENERAL

C 2.1 - PROGRAM AND CONTRAINTS

The **Client** is obliged, as required:

C 2.1.1 to define:

- either a sufficiently detailed **brief** to allow the Architect to develop the project and to define all the components of its composition, their importance and their particular requirements; or
- the **objectives** of the project and the **requirements** it has to satisfy. The development of the brief should be finalized at the conclusion of the outline proposals at the latest.

C 2.1.2 to determine the approximate project budget available that should be finalized at the conclusion of the outline proposals at the latest.

C 2.1.3 to assure the project finance

C 2.1.4 to determine the provisional construction schedule

C 2.1.5 to provide, as required:

- **legal documents** including, in particular:
 - . title deeds and any easement details,
 - . town planning certificate,
 - . co-ownership or subdivision regulations,
 - . boundary details,
 - . any preliminary authorisations necessary for the undertaking of all or part of the construction work (DRIRE, CDEC, water bylaws, etc.),
- **previous studies** as well as their administrative assessment, if applicable;
- **technical data**, including in particular:
 - . survey plans (ordinance survey, site boundaries and constructible area, contours and spot levels plan, existing floor plans, party wall plans, landscaping and drainage plans, ground, underground, overhead or radio easements, etc.),
 - . soil survey results and analyses,
 - . search results for buried constructed elements, for cavities, quarries, burrows, miscellaneous underground networks and works, archaeological remains, etc.,
 - . climatic, seismic constraints and exposure to natural risks plans, etc.,
 - . photographic or other documents facilitating the integration of the project in the site, and
 - . the particular rules and regulations specific to the project of which the Client has knowledge.
- the final construction cost at the end of the project.

C2.1.6 to provide the Architect with all means of access to the existing buildings

C2.1.7 to inform before any intervention, as applicable, the initial building designer or the subsequent designers.

C 2.2 - TECHNICAL CONTROLLER

Under the circumstances and the conditions foreseen by the Construction and Housing Code, the Client appoints a Technical Controller to participate in the prevention of various technical risks. He informs the Architect of the Controller's address and the scope of his appointment.

In particular, the Technical Controller gives advice on the problems concerning structural stability and the safety of persons.

The Client requests the Technical Controller to issue him his recommendations and reports with copies to the Architect and the Contractor.

The Architect is not liable for the reprography expenses incurred by the Technical Controller's appointment.

C 2.3 - PLANNING SUPERVISOR

Except in the specific circumstances foreseen in clause L 235-4 of the Labour Code (private self-build projects), the Client is under the obligation, in accordance with Act N° 93-1418 1993:

- to appoint a qualified Planning Supervisor, for both the design and construction phases, when at least two contractors or two self-employed persons including sub-contractors, intervene at the same time on the construction site; and
- to give preliminary notice to the Inspection du Travail, the OPPBTP (*Organisme professionnel de prévention du bâtiment et des travaux publics*) and the CRAM (*Caisse régionale d'assurance maladie*), when the anticipated number of work persons exceeds 20 at any point in time, irrespective of the nature of the construction work and when the duration of the construction exceeds 30 working days or when the expected amount of construction work is superior to 500 person-days.

The Planning Supervisor appointment can be attributed either to the Architect or another Consultant chosen by the Client. In the latter event, the Client informs the Architect of the Supervisor's address and the scope of his appointment.

In either situation, the appointment is confirmed by a specific agreement and the fee is distinct from that agreed by the present Architect's Appointment.

C 2.4 - EXISTING AND NEIGHBOURING BUILDING CONDITIONS SURVEY

The Client declares to have been informed by the Architect of the need to establish a report on the conditions of the existing and possibly the neighbouring buildings before any intervention.

This existing conditions survey allows a report to be drawn up so as to avoid any subsequent dispute over the conditions of the buildings before and after the construction work, to draw the attention of the parties on the possible risks during construction and to warn neighbours of potential inconveniences.

It is undertaken either by a court appointed expert (preventive proceedings on the initiative of the Client or any party to the construction) or, for minor projects:

- by a bailiff, the concerned parties having been summoned; or
- by the project Architect and the architects of the adjoining premises with the authorization of their respective building owners.

C 3 STANDARD APPOINTMENT

The standard services for existing building construction work, attributed to the Architect by the Client, is divided into three successive Work Stages:

- Work Stage 1: Surveys/Investigations
- Work Stage 2: Outline Proposals
- Work Stage 3: Project Design and Contract Administration

Each of these Work Stages can be commissioned independently. Their scope is defined in the present clause.

C 3.1 - WORK STAGE 1 - SURVEYS/INVESTIGATIONS

According to the circumstances and the nature of the project, **Work Stage 1: Surveys/Investigations** includes all or any of the services described below.

The list of those that are attributed to the Architect is scheduled in article **A5**.

C 3.1.1 Existing conditions survey

The surveys are intended to inform the Client about the condition of the existing buildings.

C 3.1.1.1 Obtaining access to premises

The Architect contacts the occupants and neighbours to gain access to their respective premises.

C 3.1.1.2 Checking drawings provided by the Client

The Architect checks on site, by spot checks, the accuracy of the drawings that he has been given.

In the event of inaccuracies, lack of precision or omissions, the Architect can request an additional service to undertake the existing building survey. The Client supports the prejudicial consequences should he refuse. The Architect issues his recommendations in writing to the Client.

C 3.1.1.3 Existing building survey

Within the limits of the project requirements, the Architect undertakes the survey of the existing buildings. Whenever necessary, the Architect retains the services of a Chartered Surveyor or any other consultant.

C 3.1.1.4 Party wall survey

The Architect measures on-site, in plan and in elevation, all the built elements situated on, or in immediate proximity to the site boundary.

Whenever necessary, the Architect retains the services of a Chartered Surveyor or any other consultant

C 3.1.1.5 Existing building defects survey

The Architect may notice the presence of defects affecting all or part of the existing buildings liable to create problems and additional cost during the construction of the project.

He draws up a list and short description indicating, if possible, their likely consequences. He issues this report to the Client.

If justified by the gravity and the consequences of these defects, the Architect proposes a technical appraisal service.

C 3.1.1.6 Technical appraisal service

The Architect describes the defects, determines the gravity and likely deterioration, ascertains causes and, if possible, proposes remedial solutions.

If the technical and financial consequences of these defects are likely to compromise the project, the Architect informs the Client accordingly.

C 3.1.1.7 Existing building drawings

The Architect prepares the surveys at appropriate scales or completes the previously prepared surveys.

The degree of detail corresponds generally to drawings prepared at 1:50 scale maximum with, if necessary, certain significant details at 1:20 scale.

In the case of recording data on computer, the type of support and the programme format are defined in article **A5.1.1** of the present Agreement (Graphic representation of existing buildings). Otherwise, the Architect chooses the format.

C 3.1.1.8 Photographic record

The Architect undertakes a photographic survey of the most significant elements of the existing buildings (eg. general views of the buildings, significant areas, potential defects, adjoining constructions, etc.).

C 3.1.1.9 Recapitulative Report

The Architect provides a report that informs the Client on:

- the general condition of the building;
- the specific condition of its constituent components and technical plant, particularly if they may require alterations; and
- the possible need of attributing additional investigation studies to the Architect or other specialist consultants.

C 3.1.2 Technical and architectural investigations

The investigations are intended to inform the Client about the technical and statutory constraints on the project. Its feasibility can only be appreciated at the conclusion of the Outline Proposals foreseen in Work Stage 2.

If these constraints render the project unfeasible or difficult to achieve, the Architect consults with the Client. If no solution is found, the Architect's Appointment is terminated.

C 3.1.2.1 Historical research

Within the limits of the project requirements, the Architect reconstitutes the history of the construction from records provided by the Client or those he has found (local archives, solicitors, various publications, etc.).

Through his research, he determines the dates of the original construction, the various modifications or extensions. He issues the Client a brief recapitulative report.

C 3.1.2.2 Public and private regulations and constraints applicable to the project

This service is intended check the statutory feasibility of the project.

Research and documentation

The Architect collects from the various public or private bodies concerned, the statutory and technical information applicable to the project. He draws up and presents the list to the Client.

The Client is not dispensed from making available any information of which he has knowledge and which can influence the project development.

Analysis

The Architect reviews, with respect to the relevant regulations and good practice, the possibility of adapting the building and its access to its new use (fire security, sanitary services, handicapped person accessibility, car parking, acoustics, etc.).

Recapitulative Report

The Architect prepares and issues a report to the Client.

C 3.1.2.3 Analysis of urban context and architectural perception of the existing built environment

The Architect studies the impact of the building in the architectural and urban tissue. He also studies its functional integration (access and servicing, car parking, fire security, waste disposal, etc.).

C 3.1.2.4 Building evaluation

The Architect studies the structural and technical characteristics of one or several buildings and makes sure the technical plant complies with current standards and regulations.

He prepares a short report allowing, as comprehensively as possible, the architectural and technical constraints necessary for the design and construction of the project to be understood. Depending on the construction work to be undertaken, the evaluation can treat the viability, the ground, the subsoil, the mechanical resistance of the foundations and framework, the condition of the building fabric, the roofing and technical plant.

C 3.1.2.5 Adjoining premises evaluation

The Architect proceeds with the examination of all the elements to be taken into account during the design stage and in particular:

- the adjoining premises;
- the floor structures constituting the neighbouring premises;
- the existing roofs and adjoining premises roofs; and
- the entire internal piping systems, in particular those that serve or originate from the neighbouring premises.

C 3.1.2.6 Building pollution

The Architect evaluates the pollution conditions of the existing buildings and prepares a report.

If the evaluation reveals the presence of pollution or parasites whose eradication is necessary or if legislation makes compulsory the undertaking of a specific investigation (asbestos, lead, woodworm, fungus, etc.), the Architect prepares this investigation or, if he is not qualified to do so, proposes to the Client to appoint a specialist consultant.

C 3.1.2.7 Pollution removal measures

Pollution removal measures are the subject of a separate contract.

C 3.1.2.8 Consultant brief development

If the Client decides to appoint specialists for specific services on his own initiative or on the Architect's recommendation, he can request the latter to draw up corresponding terms of appointment.

C 3.2 - WORK STAGE 2 – OUTLINE PROPOSALS

Providing the surveys and investigations foreseen in Work Stage 1 did not reveal constraints rendering the project unfeasible, the Architect prepares the outline proposals defined below.

C 3.2.1 Outline design proposal

The Architect proposes an outline design proposal corresponding to the Client's requirements, translating either the principal elements of the brief, if already defined by the Client, or the objectives and requirements the project has to satisfy.

He prepares plans of the various floors and, if needs be, certain details and sketches to express the overall volume.

The degree of detail corresponds generally to drawings prepared at 1:200 scale maximum with certain significant details at 1:100 scale.

In the case of recording data on computer, the type of support and the programme format are defined in article **A5.1.1** of the present Agreement. Otherwise, the Architect chooses the format.

C 3.2.2 Construction cost estimate

The Architect prepares and forwards to the Client an outline evaluation of:

- the construction work;
- the Architect's and other consultants' fees;
- the other expenses scheduled in article **A4.2**.

The Client declares to have been informed that he will have to finance the possible additional costs resulting from indispensable but unpredictable supplementary construction work. Concerning construction work on existing buildings, the services attributed to the Architect do not allow the risks of contingencies to be eliminated.

C 3.2.3 Project feasibility

The Architect issues the Client his recommendations on the feasibility of the project.

In the absence of written comments forwarded within 15 days, except under the specific conditions agreed in the Articles of Agreement, these recommendations are considered as accepted by the Client and the Architect commences Work Stage 3.

The Client finalizes the definitive project brief and construction cost estimate.

In the absence of written notice by the Client within the above-mentioned period, the evaluation prepared by the Architect becomes the construction cost estimate.

In the event of inconsistency between the outline proposal, the construction cost estimate and the project budget defined by the Client, the Architect consults with him to render the project feasible. If no solution is found, the Architect's Appointment is terminated.

C 3.3 - WORK STAGE 3: PROJECT DESIGN AND CONSTRUCTION

The scope of the Appointment and services described below are undertaken having verified the feasibility of the project during the Outline Proposals.

C 3.3.1 Project design

C 3.3.1.1 Sketch Design

The Architect develops the preliminary design in plan and in volume and proposes technical solutions best adapted to the project brief. The degree of detail generally corresponds to drawings prepared between 1:200 and 1:100 scale.

He prepares a preliminary construction cost and estimates the overall project construction time schedule. Further, the Architect confirms the relationship between the construction cost estimate approved by the Client at the end of the outline proposals and the cost that he considers necessary for the construction of the project. This estimation concerns all the various elements of expense as scheduled in article A4.2.

C 3.3.1.2 Detailed Design

The Architect checks compliance with the various regulations.

He determines the detailed areas of all the elements in the brief, finalizes in plan, section and elevation the dimensions of the building, develops its appearance, justifies the technical solutions retained and drafts the specification defining the type of the materials.

The degree of detail corresponds generally to drawings prepared at 1:100 scale with certain significant details at 1:50 scale.

The Architect prepares the final construction cost estimate with a variation limited to more or less 15% of the contract sum. This variation limit is only valid if the brief defined in the Articles of Agreement is unchanged.

C 3.3.2 Planning Application (or Building Notice)

The Architect prepares the architectural drawings and written documents necessary for the planning application or building notice according to the current regulations including in particular, as may be required: site plan at 1:200 scale, floor plans, sections and elevations at 1:100 scale, landscape principles, handicapped person access, fire security notice, etc. These scales can be varied depending on the size of the project.

He assists the Client with the preparation of the administrative application.

The Client signs all the necessary documents including the drawings. This formality is considered to be his approval of the project design stage.

After the submission of the planning application or building notice, at the Client's request, the Architect assists him in his dealings with the administration.

The Client informs the Architect of any correspondence with the administration.

On obtaining planning permission or building notice approval, he issues the Architect copies of the notification and its appendices and proceeds with the statutory display of notice on the construction site.

C 3.3.3 Detailed Design

With plans, sections and elevations, the Architect develops the form of the various components of the building, the type and quality of materials and the conditions of their application.

He determines the location and space requirements of the structural elements and the technical plant, indicates the water supply and drainage layouts, specifies the Works and draws up location plans necessary for understanding the project. He prepares a provisional time schedule for project completion.

The Architect prepares all the detailed descriptions of the Works in the form of a technical specification that includes, for each trade:

- a written document describing the Works; defining their technical specifications. This document determines the scope of each sub-contract if it is common to several contracts;
- the drawings indicating with plans and sketches the specific provisions for the Works to be built, if required to be provided in computerized or digital form. The degree of detail generally corresponds to drawings prepared at 1:50 scale maximum with all the important details of architectural design at appropriate scales; and
- if necessary, supplementary documents provide the contractors with additional information for the construction work.

He prepares the construction cost estimate by trades with a variation limited to more or less 10% of the contract sums.

C 3.3.4 Assistance with awarding contracts

C 3.3.4.1 Tender Documentation

The Client decides whether or not to call for competitive tenders from contractors.

He examines with the Architect the means of building procurement and decides on the tendering procedures (Independent Sub-Contractors, Contractor Consortium or General Contractor).

The awarding of building contracts to separate trades makes additional co-ordination and construction management services necessary (see below clauses **C4.4** and **C4.5**).

Assisted by the Architect, the Client draws up the list of contractors selected to tender.

The Architect assembles the project documents necessary for the contractors to appreciate the type, the quantity, the quality and the extent of their services and to prepare their tenders, namely: plans, sections and elevations at an appropriate scale, generally 1:50, all necessary details at appropriate scales, detailed separate trade specifications, a standard tender form and outline construction schedule.

The Architect assists the Client to prepare the additional administrative documents which form part of the tender file: the specific tender regulations, the conditions of tender, the proposed form of contract or agreement, the list of contractual documents with their order of priority, etc.

The Client approves and issues the tender file to the contractors consulted.

Unless otherwise agreed in the Articles of Agreement, the Architect is not liable for the cost of reproduction of the tender files for contractors.

C 3.3.4.2 Awarding contracts

The Architect assists the Client during the evaluation of contractors' tenders, undertakes their appraisal, prepares his report, recommends to the Client a list of contractors to be retained and completes the documentation of a or several building contracts.

He advises against the choice of a contractor who appears not to have sufficient guarantees or is unable to provide suitable insurance to cover his professional risks.

The Client checks the good financial and legal standing of the Contractor likely to be retained to execute all or part of the construction work.

The Client and the retained Contractor sign the contract and any amendments.

The Client agrees with the Architect the date for commencement on site, signs and issues to the authorities concerned the statutory notice of commencement on site.

Unless otherwise agreed in the Articles of Agreement, the Architect is not liable for the cost of reproduction of the contracts for contractors.

C 3.3.5 Production documentation review

When the construction details are partially or entirely undertaken by Contractors or by other consultants, including the Architect's own consultants, he checks their compliance with the general project design that he has developed and confirms his approval of the documents (plans and specifications) if the characteristics of his project are respected.

The approval does not include the technical checking of documents prepared by Contractors other than the identification of readily detectable discrepancies. The approval does not free the Contractor from his own responsibility.

C 3.3.6 Building contract administration

The Client, having confirmed his right to build and the removal of all constraints which could prevent the Contractor's intervention on site, signs the notice authorizing the handover of the construction site. He also signs the amendments to the building contracts.

The Architect prepares and signs the notice for the construction work of the different separate trades. He organizes and chairs the site meetings and drafts the minutes which he issues to all interested parties, checks the progress of construction work and their compliance with the details of the contract, checks the Contractor's progress payment claims within 21 days of their receipt and authorizes payment, checks the claims prepared by Contractors within 45 days of their receipt, prepares the final account at the end of construction and authorizes final payment.

The Client makes known, within a week, his comments on the minutes of site meetings, is under the obligation to settle the Contractor's accounts in compliance with the conditions of contract and to inform the Architect of all payments which he makes. He refrains from giving orders directly to the Contractor or to impose technical or material choices. Should this occur, he assumes the possibly harmful consequences of his interference.

The Architect is not expected to maintain a continuous presence on the construction site.

Except for a specific condition foreseen in the Articles of Agreement or an additional service, the Architect visits the site on an average of once a week.

During construction, the Architect's service is distinct and independent from that of the Contractor who is, in particular,

- to undertake the construction work in a professional manner, in compliance with current standards and codes of practice;
- to comply with the drawings and written documents provided by the Architect or by the design team in general;
- to comply with the requirements of the specification;
- to manage and supervise the construction work;
- to respect the costs and the construction periods recorded in the contract; and
- to comply with health and safety regulations with regards to consultants as well as third parties on the construction site.

Any neglect by the Contractor in his duties is recorded in the Architect's site reports and, if necessary, becomes the subject of a formal notice by the Client.

C 3.3.7 Assistance during practical completion

The handover of the Works is undertaken at the request of the more diligent party.

It is confirmed by the Client, with or without reservations, and constitutes the departure date of the legal responsibilities and guarantees.

The Architect assists the Client with the handover of the construction work:

- he organizes a joint visit in view of the handover of the construction work; and
- he prepares the reports and the list of possible reservations formulated by the Client who signs the reports.

Subsequent to handover:

- the Architect monitors the process of making good; and
- at the agreed date, he certifies final completion in the presence of the Client and of the Contractor.

In accordance with clause 1792-6 of the Civil Code, in the event of non-execution of the making good within the agreed period, after a formal notice remains unheeded, another contractor undertakes the construction work at the expense and risk of the defaulting Contractor.

After the handover, whether it is formal or tacit, the Client issues notice of final completion of the construction work to the local authority.

C 3.3.8 Record Documentation

The Architect collects, in view of the operation and maintenance of the Works, the following documents:

- the plans and details corresponding to the executed Works. ie. all drawings of the Works "as built" by the Contractor;

- the operating and maintenance manuals of the Works prepared or collected by the Contractor and issued to the Architect; and
- as far as their knowledge is useful for the operation of the Works, the contract documents and details prepared by the Contractor.

The building contract agreed between the Client and the Contractor should require that drawings and written documents are prepared by the Contractor in duplicate and that they be issued at the latest to the Architect on the day of practical completion.

The Architect uses all possible means, including a formal notice, to obtain the necessary documents for the constitution of the Record Documentation. On the Architect's recommendation, non-compliance by the Contractor leads the Client to use all possible means (eg. formal notices, etc.) to force the defaulting Contractor to meet his obligations.

A copy of the Record Documentation is issued to the Client when they become available and at the latest within the timescale determined by the Articles of Agreement.

C 3.3.9 Completion of the Appointment

The Architect's Appointment is completed at the latter of the following dates: either at the final completion or on delivery of the Record Documentation to the Client. The services undertaken subsequent to this date are invoiced on the time charge basis.

C 4 OTHER SERVICES

The standard service of the Architect for construction work on existing buildings is described in Section **C3** above. In particular, the Client can decide to supplement it by one or several of the services described in the following paragraphs.

These services are to be included in the Articles of Agreement or the subject of an amendment and give rise to a distinct fee.

C 4.1 - DEMOLITION APPLICATION

The Architect prepares the architectural drawings and written documents necessary for the demolition application in compliance with the current regulations and in particular, as may be required: site location plan at a scale between 1:2000 and 1:10000 indicating in particular the orientation and access roads, site plan at a scale between 1:200 and 1:50 including the floor plan with indication of the type and occupation of the premises, photographic documents, proposal or proposition for re-housing the tenants or occupants and the public utility statement.

He assists the Client with the preparation of the administrative application.

The Client signs all the necessary documents, informs the Architect of any correspondence with the administration, issues him a copy of the administration decision and proceeds with the statutory display of notice on the construction site.

C 4.2 - BILL OF QUANTITIES

The bill of quantities is intended to standardize the presentation of the contractors' tenders.

Set out in the form of a schedule, this document lists the different units of Work and determines the quantities for each of the separate trades.

C 4.3 - PRODUCTION DRAWINGS

Based on the project developed by the Architect for the calling of tenders, the production drawings are intended to facilitate the technical development of the project and to define the provisional timescale for the construction work by separate trades.

When the Contractor does not prepare the production documentation, the Client can attribute this additional service to the Architect, eventually assisted by specialized technicians, in whole or for the part for which the Contractor was not liable to document

The production drawings at appropriate scales, the calculation notes and the specifications intended for the construction site enable the Contractor to undertake the construction work.

The production documents drawn up by the Architect in no way substitute for the shop, assembly and construction drawings that remain the Contractor's responsibility.

C 4.4 - CO-ORDINATION STUDIES

The co-ordination studies are intended to assure the spatial coherence of the Works for all the separate trades with respect to the architectural, technical, operation and maintenance aspects of the project.

When the building contracts are awarded to several sub-contractors responsible for their own production documentation, the Client attributes this additional service to the Architect.

When the building contract is awarded to a General Contractor or to a Contractor Consortium responsible for their own production documentation, the General Contractor or the representative of the Consortium supplements it with co-ordination plans. In this event, the Architect participates in the co-ordination by checking the compliance with the architectural characteristics of all the documents produced by the Contractor.

C 4.5 - CONSTRUCTION ORGANIZATION, CO-ORDINATION AND MANAGEMENT

Organization and planning are intended to evaluate the elementary tasks concerning the production documents and the construction work, to determine their sequences as well as the critical paths, to propose measures aimed at complying with the construction period and an appropriate distribution of possible penalties.

Co-ordination is intended to harmonize in time and space, the intervention of the various Sub-Contractors during the construction period.

Management is intended to apply, during the construction work and up to the final completion, within the period agreed in the building contract, the different management measures elaborated within the scope of the organization and co-ordination.

The division of the building contract into separate trades makes this additional service necessary.

When the service is attributed to a third party, the Client forwards his address and scope of the appointment to the Architect.

C 4.6 - OTHER ADDITIONAL SERVICES (list not exhaustive)

- Assist with the project brief development;
- Initiate the consultation and information for users or the public;
- Existing conditions survey concerning the area and habitability standards of flats financed by means of government regulated loans (Bylaw 01/03/78 amended);
- Calculation of floor areas (Carrez Act 1996);
- Impact Studies;
- Sites Commission File;
- National Monuments File;
- Commission d'Equipement Commercial File (CDEC or CNEC);
- Provision of technical details to prepare commercial documents, descriptive notices, presentation reports, sale plans;
- Provision of the technical details to prepare co-ownership regulations;
- Design, definition and choice of specific furniture or technical plant;
- Signalisation design;
- Assist the Client with the integration of art works within the project;
- Assist the Client in the definition and the execution of specific landscaping proposals;
- Various files (ANAH, QUALITEL, etc.);
- Fire security systems service;
- Determination of operation and maintenance costs, implementation of management system proposal;
- Inspections of specific supplementary construction work (eg. fitting-out requested by owners of future development);
- Specific inspections of the execution of certain Works requiring permanent site presence;
- Planning Supervision (specific contract exclusively, refer clause **C2.3**);
- During the pre-contract period, draw up the quality and independent control guide; and
- Technical assistance to the Client in the event of disputes with third parties to this contract.

C 5 PROFESSIONAL FEES

C 5.1 - FEE BASIS

For the Appointment, the Architect is paid exclusively by the Client in the form of fees that are determined in function of:

- the scope and the extent of the Appointment;
- the complexity of the project;

- either the time spent which ensues from the two previous points or from the final contract sum constituted by the final building contract account prepared by the Architect and, if necessary, supplemented by the basic cost of the construction work such as would result from their execution by a Contractor should they be executed by the Client or by others.

Irrespective of the basis of fee calculation retained, to these fees are added the direct expenses incurred by the Architect within the scope of his Appointment.

The disregard by the Contractor of his obligations is without incidence on the Architect's right to collect fees under the conditions of the present Agreement.

The Client remunerates the Architect in accordance with one of the following methods as defined in the Articles of Agreement.

C 5.1.1 Lump Sum Fee

The lump sum remuneration is agreed between the parties in function of the time spent as anticipated by the Architect considering the complexity of the brief, the Appointment that he is attributed and his office hourly rate.

The fee amount is revised under the circumstances and conditions agreed in clauses **C5.2**, **C5.6** and **C5.7**.

C 5.1.2 Percentage Fee

The percentage applies to the final contract sum of the construction work exclusive of value added tax as results from the final contract sums of the building contracts.

However, the percentage is subject to re-negotiation in the case of increased complexity of the Appointment.

The fee amount is revised under the circumstances and the conditions agreed in clauses **C5.2**, **C5.6** and **C5.7**.

In the event of suspension of the Appointment, the fee amount due is equal to the estimated cost of the abandoned project at the date of the suspension, multiplied by the percentage indicated in article **A5.2.1** and if necessary supplemented by the compensation agreed in clause **C9.1**.

C 5.1.3 Time Charge Fee

The time charge fee is invoiced on the basis of the actual work done by the Architect and his employees.

The Articles of Agreement define in particular the hourly rates of the Architect and his employees or the average hourly rate of the office including all the overheads.

The hourly rate amount is re-assessed under the circumstances and the conditions agreed in clauses **C5.2**, **C5.6** and **C5.7**.

C 5.2 - FEE REVISION

The fees are revised, with the advancement of the Appointment, in accordance with the following formula:

Definitive amount = (Po x 15 %) + (Po x 85 % x Im/lo) + (Fe-Fi), in which

- **Po** = initial cost of fees exclusive of VAT
- **lo** = B.T. 01 index of the month indicated in article **A5.4** of the Articles of Agreement
- **Im** = B.T. 01 index of the month at the end of the Appointment
- **Fi** = estimated direct expenses
- **Fe** = actual direct expenses incurred, justified by a detailed memorandum

C 5.3 - VALUE-ADDED TAX

The fees so determined are subject to VAT according to the current rates.

C 5.4 - PAYMENT METHODS

C 5.4.1 Payment terms and schedule

The fees are payable in accordance with the advancement of the Appointment unless otherwise agreed in article **A5.6.1**.

The fees relative to the Work Stage Building Contract Administration are settled by equal monthly instalments spread over the duration of the construction period.

The Client pays the sums due to the Architect for the duration of his Appointment in compliance with the present Agreement and this within a maximum period of 21 days as from the date of receipt of the account, unless otherwise agreed in article **A5.6.2**.

C 5.4.2 Late payment indemnity - Interest on arrears - Recovery and accounting expenses

Any late settlement entitles payment of an indemnity of "x"/10,000th of the sum due exclusive of VAT per calendar day.

This indemnity is due without prior formal notice.

It nominally covers the expenses of bank charges, interest on arrears and any expenses directly and indirectly incurred by the recovery of accounts.

In the event of disagreement over the amount of an account, payment is made on the provisional basis of the sum acceptable to the Client, who has to justify his disagreement in writing within 15 days. At the end of this period, the account is considered as accepted and immediately due.

When the sums already paid are less than those that are finally due to the Architect, he is entitled to the late payment indemnity calculated on the balance.

C 5.5 - ACCRUED RIGHTS VALUE

In the event of termination of the Appointment, the accrued rights are calculated in accordance with the value of the services determined by their advancement and by articles **A5.1.1**, **A5.1.2**, **A5.2.1** and **A5.2.2** of the Articles of Agreement.

C 5.6 - DISBURSEMENTS AT CLIENT EXPENSE

Besides the expenses defined in clauses **A5.1.3** and **A5.2.3** of the present Agreement, the expenses of photographic or graphic documents of the site, models and the expenses of any items requested by the Client, others than those made necessary by the execution of the Appointment, are reimbursed by the Client.

They are due for reimbursement on request subject to a memorandum.

C 5.7 - CONTRACT VARIATIONS - ADDITIONAL SERVICES OR RESPONSIBILITIES

Any modifications to the Appointment, any changes to the programme or the time schedule, any modification to approved documents requested by the Client or imposed by a third party, brought about by a change in regulations or made necessary by unpredictable administrative, legal, technical or commercial chances, any additional service subsequent to the fault of a Contractor, give rise to the inclusion of an amendment and incurs an increase in the fees in proportion to the studies or other additional services necessary for compliance.

In particular, the exceeding of the construction period caused by the Contractor gives rise to the payment of additional fees to allow the Architect to extend his visits to the construction site. The Client declares to have been informed by the Architect that these additional fees can be deducted from the contract sum of the Contractor concerned provided that the deduction was agreed in the clause relative to late penalties in the conditions of the building contract.

If the Client or if unpredictable circumstances require outside consultants (eg. chartered surveyor, acoustician, museologist, stage designer, etc.) whose intervention is not included in the present Agreement, the Architect is not liable for the expenses incurred.

C 6 RIGHTS AND OBLIGATIONS OF THE PARTIES

C 6.1 - CLIENT'S RIGHTS AND OBLIGATIONS

C 6.1.1 Respect for Architecture Act

The Client undertakes to respect and to have respected the provisions of the Architecture Act 1977 and its decrees of application, in particular the Architects' Code of Professional Conduct 1980.

He cannot object to the Architect's obligation to declare to the regional council of the Ordre des Architectes or to the government department responsible for architecture, his projects subject to a planning application or a building notice.

This declaration, which cannot be made public, concerns the nature, the importance, the cost and location of the project, the identification of the Client and the scope and the details of the Appointment.

C 6.1.2 Assignment of the Agreement

Unless otherwise agreed, the Client is committed to the Architect for the duration of the project described in the Articles of Agreement.

The Client is not allowed to give up his right to build and, in particular, to transfer the planning permission to a third party:

- before transfer of the present Agreement to any physical person or legal entity called to substitute for the Client and accepted by the Architect; or
- in the absence of such a transfer, before payment of the fees and indemnities due to the Architect in accordance with clause **C9.1** below.

C 6.1.3 Approval of Architect's documents

During **Work Stage 3**, the Client reviews the documents that the Architect submits for his approval.

This approval implies acceptance by the Client of the advancement of the Appointment, the corresponding fees and implies notification to continue the Appointment.

In the event of objection, the Client should make clear his grounds in writing within 10 days following the receipt of the documents. This period can be reduced on the express request of the Architect due to a particular degree of emergency. Beyond the agreed period, the approval is considered to be accorded.

C 6.2 - ARCHITECT'S RIGHTS AND OBLIGATIONS

C 6.2.1 Execution of contract

The Architect serves the interests of the Client provided they do not contradict the law, the general interest and his Code of Professional Conduct.

He can be assisted by one or several employees of his choice.

He can also appoint specialists as Consultants or as Sub-Consultants.

C 6.2.2 Architects in association

In the case of several architects, they distribute the work and the fees between themselves. This distribution is issued to the Client.

The Agreement is not broken by the death or the lack of availability of one of them. The other architects are responsible for the completion of the Appointment.

C 6.2.3 Client information

The Architect shall provide the Client with all useful information about the advancement of his Appointment.

At each stage of the advancement of the studies, the Architect informs the Client of any significant change in the construction cost.

During the construction work, and excluding an emergency concerning the safety of persons or property, any decision incurring additional cost is subject to Client approval.

C 6.2.4 Right to possession

The Architect has, both on his plans and studies as well as documents which were entrusted to him by the Client, a right to possession until the actual payment of his fees and any late interest payment due, provided that a relation between the retained documents and the fees due can be established.

C 6.3 - INSURANCE OBLIGATIONS OF THE PARTIES

C 6.3.1 Architect's liability and professional indemnity insurance

The Architect assumes his professional liability, such as it is defined by current laws and regulations, in particular clauses 1792, 1792-2, 1792-3 and 2270 of the Civil Code, within the limits of the Appointment which is attributed to him.

Consequently, he cannot be held responsible in any way, and in particular jointly and severally, for the damages attributed to the actions or the neglect of the Client or the other Consultants in the project that is the subject of the present Agreement.

The Architect is insured against the financial consequences of his professional liability with the insurance company and by the policy recorded in the Articles of Agreement. This policy is in compliance with the insurance obligations required by the Architecture Act 1977 and Act N° 78-12 1978 relative to liability and insurance in the construction industry.

The Architect's professional indemnity insurance certificate is annexed to the present Agreement.

C 6.3.2 Client insurances

The Client declares to have been informed by the Architect of the obligation to subscribe, before the opening of the construction site, a construction insurance for the Works in compliance with clause L 242-1 of the Insurances Code (damages which jeopardize the stability of the built Work or which renders it unfit for its intended use and which, as a rule, appear after the expiration of the defects liability period).

Furthermore, he declares to have been informed about the possibility to subscribe additional insurances covering in particular:

- the damages suffered by the building during the construction work;
- the damages suffered by the existing buildings due to the construction work (ie. sustained by parts of the existing building before the commencement of construction, not being the subject of the building contracts and belonging to the Client); and
- the damages caused to adjoining premises due to the construction work (ie. caused to adjoining buildings or to parts of the existing building before the commencement of construction and not belonging to the Client).

In the case of maintaining the building in use during the construction work, the Client declares to have been informed about the possibility of insuring the civil liability that he incurs because of consequent damages.

C 6.4 - INTELLECTUAL PROPERTY

C 6.4.1 Architect's moral and succession rights over his work

The Architect's right of ownership over his work is based in clause L 111-1 and subsequent clauses of the Intellectual Property Code. By virtue of their creation, plans, sketches, models and Works designed by the Architect are also protected, whether they be the subject or not of an Architect's Appointment.

C 6.4.1.1 Architect's moral right

Without prejudice to the initial copyright on his work, as author, the Architect enjoys the right to the respect for his name, his function and his work. This right is attached to his person. It is perpetual, inalienable and the statute of limitations does not apply. At the death of the author, it is transmitted to his heirs.

In particular, the Architect has the right:

- to sign his name on his work, whether it is design studies and plans or the actual building and to insist that his name be maintained there;
- to see his name and profession on the publication of plans or photos of the building; and
- to object to the modification of his work in the event of denaturation.

C 6.4.1.2 Architect's succession right

During his life, the Architect enjoys the exclusive right to exploit his work by whatever means and to draw a financial profit. At his death, this right persists to the benefit of his legal successors during the current calendar year and during the subsequent 70 years.

These succession rights are freely transferable under the following conditions:

- the global transfer of future works is forbidden;
- each of the ceded rights is the subject of a distinct mention in the transfer act and the exploitation of the ceded rights is limited as for its scope and purpose, as in place and in time; and
- the transfer contains the mode of payment for reproduction rights, eg. in form of a proportional participation in receipts resulting from the sale or the exploitation.

Unless otherwise agreed in the Articles of Agreement, the Architect is entitled to the repeated execution or the reinterpretation of his project within the context of another project.

C 6.4.2 Client's rights

When the Client pursues, without the Architect who is the author of the work, the development of the project that is the subject of the present Agreement, he respects his moral right and gives him the means to make sure that his work is respected.

The conditions of clause **C2.1.7** are applicable at the time of any subsequent adaptation or modification of the Works.

C 6.5 - PATENTS AND PROTOTYPES

C 6.5.1 Patents

The Architect informs the Client of the patentable inventions developed during the present Agreement and asks him not to disclose them.

When the Architect of the patentable inventions developed during the present Agreement has informed him, the Client shall not claim any rights over these inventions and refrains from disclosing them.

C 6.5.2 Prototypes

Without prejudice to the right to the repeated execution of the project by the Architect, clause **C6.4.1.2** of the present Agreement does not apply to the prototypes mentioned in the clause 5 of the Architecture Act 1977.

C 6.6 - RELATIONS WITH THIRD PARTIES

C 6.6.1 Relations with the public

Except if an additional services is attributed to the Architect, the Client consults and informs the users, the neighbours and the public. He assumes all the tasks that result.

Before any intervention on site, he undertakes the necessary consultations and visits (bailiff's affidavit, court orders, etc.).

C 6.6.2 Relations with the administration and public utilities

The Client signs documents prepared by the Architect, he prepares and issues the applications to the services concerned. He follows up the application, forwards to the Architect the result of his actions, informs him of the recommendations formulated and issues him a complete copy of the applications and of approvals delivered. The Architect assists the Client in his relations with the administration or public utilities.

C 6.6.3 Appointment of consultants

If the Client decides to attribute specific services to consultants, he appoints them with separate agreements.

The Architect can advise against the appointment if the particular professional did not seem to possess satisfactory qualifications, guarantees or means.

The Architect reviews the compliance of consultants studies with the architectural project but does not check the technical content.

The Architect may sub-contract a part of his services. He seeks the Client's approval of his consultants and their terms of payment.

C 6.6.4 Relations with Contractors

The Architect prepares the site instructions, controls the compliance of the construction work with the architectural project, organizes the site meetings, drafts the minutes of these meetings and prepares the progress payments and final account of the building contracts.

He assists the Client during the practical completion of the construction work and advises him on the list of defects to be noted for each trade.

The relations between the Client and the Contractor are defined in Section **C3** and, in particular, in clause **C3.3.6** of the present Articles of Agreement.

Furthermore, the Client declares to have been informed by the Architect of the obligations binding him concerning sub-contracts by application of Act N° 75-1334 1975 and, in particular, the fact that:

- the Contractor who resorts to sub-contracting has to have his sub-contractors accepted and their terms of payment agreed by the Client; and
- in default of directly paying the sub-contractors by delegation, the Client must insist that the Contractor has justification to have provided a personal and joint and several guarantee from a financial establishment to secure the sums that they are due.

C 7 SUSPENSION OF APPOINTMENT

The Client can request the suspension of the Appointment. The Architect if because of the Client can also request it and, in particular, in the event of late payment of fees due or because outside events hinder the progress of the project, his Appointment cannot continue under the conditions of the present Agreement. The party who requests or claims suspension notifies the other party.

In the event of late payment of sums due, the suspension can only intervene after a formal claim remained unsuccessful within the 30 calendar days following its receipt by the Client. The fees are then settled in proportion to the services executed and the incurred expenses with the application of a 10% increase calculated on the total amount of the payment agreed in the Agreement.

In the event of suspension for late payments, the provisions of clause **C5.4.2** apply.

When the Appointment resumes, the fees already paid are deducted from the total amount of the fees with the exception of the aforementioned 10% increase.

Except as agreed between the parties, if the Appointment is not resumed within a period of 90 days following receipt of the notice of suspension, the Appointment is considered terminated and the provisions of clause **C9** apply.

C 8 UNAVAILABILITY OF THE ARCHITECT

If as a result of serious illness, of death or for any other serious cause, the Architect is unable to complete his Appointment, the Architect, his legal successors or the regional council of the Ordre des Architectes where he is registered proposes a replacement to the Client.

C 9 DETERMINATION OF AGREEMENT

The present Agreement is terminated in law by the party that is neither at fault nor in infraction of his own obligations, one month after a formal notice remains ineffective. Notified by registered letter with recorded delivery, it consists of a statement from the party that benefits from the present clause, in all circumstances of non-fulfilment or breach of the provisions of the present Agreement by the other party.

C 9.1 - DETERMINATION ON CLIENT'S INITIATIVE

In the event of termination on the Client's initiative that is not due to the fault of the Architect, the latter is entitled to the payment of:

- the fees and expenses incurred up to the day of this termination, in accordance with clause **C5.5** of the present Agreement;
- the interest on arrears referred to in clause **C5.4.2**; and
- the termination indemnity equal to 20% of that part of fees that would have been paid if his Appointment had not been prematurely interrupted.

When termination is justified by the fault of the Architect, the termination indemnity of 20% is not due.

C 9.2 - DETERMINATION ON ARCHITECT'S INITIATIVE

The termination of the present Agreement can only be on the Architect's initiative on just and reasonable grounds such as, for example:

- the loss of confidence on behalf of the Client;
- the emergence of a situation susceptible to compromise the Architect's independence or in which his private interests could be considered in preference to those of the Client;
- the impossibility for the Architect to respect good practice, his code of ethics or any legal or statutory provisions;
- the choice imposed by the Client of a contractor not presenting the guarantees indispensable for the proper execution of the Works; and
- the breach by the Client of one or several clauses of the present Agreement;

In the event of termination on the Architect's initiative, he is entitled to the payment of:

- the fees and expenses incurred up to the day of this termination in accordance with the clause **C5.5** of the present Agreement; and
- the interests on arrears referred to in clause **C5.4.2**.

Furthermore, when termination is justified by the incorrect behaviour of the Client, the Architect also has right to payment of an indemnity equal to 20% of that part of the fees that would have been paid if his Appointment had not been prematurely interrupted.

C 10 DISPUTE RESOLUTION

In the event of disputes concerning compliance with the articles and clauses of the present Agreement, the parties agree to request the advice of the regional council of the Ordre des Architectes where the Architect is registered before any legal proceeding other than of preventive action.

This referral intervenes on initiative of the more diligent party.