



CNOA STANDARD AGREEMENT: ARCHITECT - NEW BUILD

PART 2: Conditions of Agreement

C0 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 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, clauses 1792-2, 1792-3 et 1792-4-1 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.

C1 DEFINITIONS

The term "**Client**" means the natural person or legal entity for whom the service is provided and who pays the fees.

The term "**Architect**" means an architect, a registered person or an architecture company, enrolled on the register of the Ordre des Architectes to whom the Client confides the Appointment described in the Memorandum of Agreement.

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

The term "**Agreement**", which binds the Client and the Architect, means the present "Conditions of Agreement", the "Memorandum of Agreement" and the "Fee Schedule". These three documents are complementary and inseparable. In the event of conflict between the provisions of the Agreement contract documents, the provisions of the Memorandum of Agreement take precedent over those of the Conditions of Agreement. In regard to professional fees, the Fee Schedule take precedent over the Memorandum of Agreement and the Conditions of Agreement.

The term "**Amendment**" means any document signed by the Client and Architect whose purpose is to change the terms of the Agreement.

The term "**Project Budget**" means the sum of the costs necessary to carry out the project. It includes the cost of the construction works as estimated by the Architect, the fees of the Architect and the direct expenses of the Appointment (as detailed in the Memorandum of Agreement). It does not include ancillary expenses listed in, but not limited to, clause M 4.3 of the Memorandum of Agreement (such as fees related to planning applications, utilities connection charges, soil survey fees, land surveyor fees, etc.).

The term "**Performance Label**" refers to the approach defined by recognized public or professional bodies to which the Client or her/his Representative recorded in the Memorandum of Agreement voluntarily and contractually complies.

The present **Conditions of Appointment** determines the general provisions governing the relations between the Client and the Architect.

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

- the name and the legal entity of the contracting parties;
- the purpose of the project;

- the Appointment confided to the Architect;
- the conditions, the amount and the basis of her/his fee calculations; and
- the conditions by which the Architect satisfies her/his professional indemnity insurance obligations

The **Fee Schedule** determines the method of calculating the Architect's fees, establishes the fee breakdown and details the direct expenses of the Appointment.

C2

GENERAL

C 2.1 - PROJECT BRIEF AND CONSTRAINTS

The Client is required, in a timely manner:

C 2.1.1 - TO DEFINE AND ISSUE TO THE ARCHITECT

- A sufficiently detailed **project brief** to allow the Architect:
 - to develop the project
 - to define all the components of its composition, their importance and their particular requirements
- The **budget** at her/his disposal to finance the project and, in particular, the construction cost.
- The provisional **project programme**.
- Any Performance Labels that the Client wants to obtain as defined by recognized public or professional bodies.

C 2.1.2 - 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.)
- Contractual information, including the appointments of other design team members, if any
- If applicable, **previous studies** as well as their administrative assessment
- **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, miscellaneous underground networks and works, archaeological remains, etc.
 - climatic, seismic constraints and exposure to natural or technical risks plans, etc.
 - photographic or other documents facilitating the integration of the project in the site
 - the particular rules and regulations specific to the project of which the Client has knowledge
 - mandatory technical investigations
- The **final construction cost** on completion of the project.

C 2.1.3 - COMPLIANCE WITH THERMAL REGULATIONS

The project is carried out under provisions of the thermal regulation or Performance Label recorded in article M 3 of the Memorandum of Agreement.

Within the scope of her/his obligation of means, the Architect endeavours to implement architectural and technical solutions to achieve the above mentioned thermal performance.

The theoretical consumption results, obtained from the software calculations, can not in any way engage the design team on real consumption, in so far as, into these actual consumptions are incorporated consumptions that are not integrated in the regulations and calculation models and are subject to occupant behaviour and weather conditions which may differ significantly from the average.

Any special requirements requested by the Client shall in no event induce a relationship between the theoretical performance and actual consumption.

C 2.1.4 - PROVISIONS RELATING TO THE PROTECTION OF MORGAGEES

In compliance with clauses L 312-2 and thereafter of the Consumer Code, when the Client as a private individual has construction work carried out for residential use or professional and residential use, s/he signs the aforementioned declaration appended to the Architect's Appointment "Dispositions relatives à la protection des emprunteurs dans le domaine immobilier" (Provisions relating to the protection of real estate borrowers).

C 2.2 - BUILDING CONTROL SURVEYOR

Under the circumstances and the conditions foreseen by the Code de la Construction et de l'Habitation (CCH), the Client appoints a Building Control Surveyor to participate in the prevention of various risks. S/he enters into a separate appointment and informs the Architect of the Surveyor's address and telephone number and the scope of her/his appointment.

In particular, the Building Control Surveyor gives advice on the structural stability, the safety of persons and disabled persons accessibility (clauses L 111-26 and R 111-39 of the CCH).

The Client instructs the Building Control Surveyor to issue her/his recommendations and reports to her/him with copies to the Architect, within a period compatible with the design programme and, at the latest, 15 days before the launch of the tender action.

The Architect is not liable for the reprography expenses incurred by the performance of the Building Control Surveyor's services.

C 2.3 - PRINCIPAL DESIGNER

Except in the specific circumstances stipulated in clause L 4532-7 of the Labour Code (private self-build projects), the Client is under the obligation, in compliance with clauses L 4531-1 to L 4532-18 of the Labour Code:

- to appoint a qualified Principal Designer for both the design and construction phases, when at least two contractors or two self-employed persons including sub-contractors, intervene simultaneously or successively 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 (clauses L 4532-1 and R 4532-2 of the Labour Code).

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

C 2.4 - OTHER CONSULTANTS REQUIRED TO UNDERTAKE THE PROJECT

When the Client decides to assign specific services to independent consultants (structural, mechanical, thermal engineers, set designer, etc.), these are separate appointments.

The Architect advises against one of them if the design professional does not seem to her/him to present adequate and/or appropriate qualifications, guarantees or professional indemnity insurance.

The Architect ensures the compliance of specialists studies with the architectural project but does not undertake any technical verification.

The Architect may subcontract part of her/his services. S/he seeks Client approval of consultants and agreement of their terms of payment. Tacit approval shall be deemed attained by default in the absence of express refusal of the Client 8 days after the Architect's proposal or within the time stipulated in the Memorandum of Agreement.

However, under clause 37 of the Decree No. 80-217 of 20th March 1980 on the Code of Architects' Professional Duties, s/he can neither undertake nor subcontract the development of the architectural project as defined in clause 3 of the Architecture Act 1977.

C3 SCOPE OF STANDARD APPOINTMENT

The Architect's Appointment confided by the Client is divided into Work Stages whose contents are defined in the present section.

S/he may be assisted by employees of their choice.

S/he may also appoint the support of specialists as joint consultants or sub-consultants.

Unless otherwise stipulated in the Memorandum of Agreement, one copy of documents corresponding to each Work Stage of the Appointment is issued.

C 3.1 - PRELIMINARY DESIGN

The Preliminary Design is intended to give an overall solution corresponding to the Client's requirements, translating in schematic design, the major elements of the project brief and to verify, as ratios, the adequacy of the project budget.

The Architect analyses the project brief, visits the site, reviews the technical, legal and financial data provided by the Client. On this occasion, s/he gives any useful comments and proposals. S/he issues a general report.

S/he prepares plans of the main floors and, if necessary, certain details and sketches to express the overall volume.

The degree of detail generally corresponds to drawings prepared at scales between 1:200 and 1:500 maximum with certain significant details at 1:200 scale depending on the type and size of project.

The Client approves the Preliminary Design under the provisions defined in clause C 6.1.4.

C 3.2 - DESIGN STAGE

C 3.2.1 - CONCEPT DESIGN STAGE

The Design Stage is undertaken only after having verified, during the Preliminary Design, the adequacy of the budget in respect to the project brief determined by the Client.

The Architect develops the design intent in plan and in volume and proposes architectural solutions best adapted to the project brief. S/he determines the principal dimensions of the Works as well as its main features.

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

S/he issues an initial construction cost and estimates the overall project programme.

The Architect advises on the relationship between the initial budget estimate approved by the Client on signing the Agreement and her/his estimate of the project cost.

The Client approves the Concept Design Stage under the provisions stipulated in clause C 6.1.4.

C 3.2.2 - DEVELOPED DESIGN STAGE

The Architect checks compliance with the various regulations related to the project.

S/he determines the areas of all elements in the project brief, indicates in plan, section and elevation the dimensions of the Work, develops its appearance, justifies the technical solutions retained, determines the detailed areas of all the elements in the project brief and drafts the specification defining the type of materials.

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

The Architect issues the final construction cost estimate with a variation limited to more or less 10% adjusted for inflation compared to the initial estimated construction cost approved at the Concept Design Stage. This variation limit is only valid if the brief defined in the Memorandum of Agreement remains unchanged.

The Client approves the Detailed Design Stage under the provisions stipulated in clause M 6.1.4.

C 3.3 - PLANNING APPLICATION

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

S/he assists the Client with the preparation of the administrative file.

The Client signs all the necessary documents including the drawings. This formality is considered to be her/his approval of the planning application file. S/he submits the planning application file to the planning inspector.

After submission of the planning application, the Architect assists the Client, on her/his instruction, with her/his dealings with the administration.

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

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

C 3.4 - TECHNICAL DESIGN STAGE

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 installation.

S/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 to understand the project.

The Architect prepares all the detailed descriptions of the Works in the form of specifications that include, for each trade:

- a written document describing the Works; defining their technical specifications. If this document is common to several trades, it determines the scope of each subcontract.
- the drawings indicating with plans and sketches the specific provisions for the Works to be built, if required to be provided in digital format,
- if necessary, supplementary documents provide contractors with additional information to execute the construction work.

S/he prepares the construction cost estimate for each trade and prepares an outline construction programme.

The degree of detail generally corresponds to drawings prepared at 1:50 scale maximum with all the important design intent details at appropriate scales.

The Client approves the Technical Design Stage under the provisions stipulated in clause C 6.1.4.

C 3.5 - ASSISTANCE WITH AWARDING BUILDING CONTRACTS

C 3.5.1 - TENDER ACTION FILE

On signing the Architect's Appointment, the Client decides whether or not to call for competitive tenders from contractors. S/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 by trades makes additional co-ordination and construction management services necessary (see below clauses C 4.4 and C 4.5).

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

The Architect collates the project documents prepared during the Developed Design and Technical Design Stages 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 an outline construction programme.

The Architect assists the Client to prepare the additional project administrative documents which form part of the tender file: the tender conditions, the conditions of contract, 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 under the provisions in clause C 6.1.4.

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

C 3.5.2 - AWARDING BUILDING CONTRACTS

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

S/he advises against the choice of a contractor who appears not to have sufficient guarantees or is unable to provide appropriate insurance to cover its professional liabilities.

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 building contract and any amendments.

The Client agrees with the Architect the date for commencement on site, signs and issues to the authorities concerned the notice of commencement on site. S/he sends a copy of the notice to the architect.

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

C 3.6 - PRODUCTION DOCUMENTATION REVIEW

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

The review of compliance with project aims to detect abnormalities normally detectable by a skilled practitioner. It does not include the technical checking of documents prepared by Contractors or the other consultants. The review does not free the Contractor from his own responsibility.

C 3.7 - CONTRACT ADMINISTRATION

The Client, having confirmed her/his right to build and the removal of all constraints which could prevent the Contractor's intervention on site, signs off the notice authorizing the commencement of construction on site. S/he also signs any amendments to the building contracts.

The Architect prepares and signs the notices to authorize the construction work by the separate trades.

S/he organizes and chairs the site meetings and drafts the minutes which s/he issues to all interested parties, checks the progress of construction work and its compliance with the building contract, checks the Contractor's progress payment claims within 21 days of their receipt and authorizes payments, 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 her/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 s/he makes. S/he refrains from giving orders directly to the Contractor or to impose technical or material choices. Should this occur, s/he assumes the possibly harmful consequences of her/his interference.

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

Except for a specific condition foreseen in the Memorandum 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 programme recorded in the building contract
- to comply with health and safety regulations with regards to persons as well as third parties on the construction site.

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

This Appointment does not include services required for the replacement of an insolvent contractor (survey report, new tender action, choice of another contractor) that, where appropriate, will be the subject of an amendment.

C 3.8 - 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:

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

Subsequent to handover:

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

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

After handover, whether it is formal or tacit, the Client issues the notice of final completion and compliance of the construction work to the local authority, as well as certificates of compliance with building regulations. The notice is prepared and signed by the Architect where s/he monitors the Works.

C 3.9 - RECORD DOCUMENTATION

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

- the plans and details that correspond to the executed Works. i.e. 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 drawings and specifications contract documents and details prepared by the Contractor.
- the building operations and maintenance file.

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 to the Architect, at the latest, on the day of final completion.

The Architect uses all possible means, including giving 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 (e.g. formal notices, etc.) to oblige the defaulting Contractor to meet her/his obligations.

A copy of the Record Documentation documents is issued to the Client when they become available and, at the latest, within the time period recorded in the Memorandum of Agreement.

C 3.10 - COMPLETION OF THE APPOINTMENT

The Appointment is completed at the latest of the following 3 dates, either:

- at handover when confirmed without reservation;
- at final completion; or
- on delivery of the Record Documentation to the Client

and, in any event, no later than one year after Practical Completion.

C4 ADDITIONAL SERVICES

The standard service of the Architect is described in Section 3 above. The Parties can decide to supplement it by one or several of the services described in the following paragraphs.

These services are recorded in the Memorandum of Agreement or are the subject of an amendment and give rise to specific additional fees.

C 4.1 - EXISTING BUILDING SURVEY

The survey includes the measurement and drawings of all or part of an existing building.

Unless otherwise stipulated in the Memorandum of Agreement, the surveys necessary to carry out the service are invoiced on a time charge basis, together with expenses.

C 4.2 - PRICED BILL OF QUANTITIES

The priced 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 to be measured and determines the quantities for each of the separate trades.

C 4.3 - PRODUCTION DOCUMENTATION

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 full or for the part that the Contractor was not liable to document.

Based on the project developed by the Architect for tender action, the production drawings are intended to facilitate the technical development of the project and allow the Construction Manager, to define the provisional construction programme to carry out the Works by separate trades or .

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

The production documents prepared 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

Co-ordination studies are intended to assure the spatial coherence of the Works for all the separate trades with respect to the architectural, technical, operational and maintenance aspects of the project. The Client may confide this service to the Architect.

When the production documentation is prepared by Contractors, they supplement it with co-ordination plans. In this event, the Architect participates in the co-ordination team to check the compliance with the design intent of all the documents produced by the Contractors.

C 4.5 - CONSTRUCTION MANAGEMENT

Organization and planning are intended to evaluate the elementary tasks concerning the production documents and the construction works, to determine their sequences as well as the critical paths, to propose measures aimed at complying with the construction programme 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 programme.

Construction management is intended to apply, during the construction work and up to final completion, within the time period agreed in the building contract, the different management measures elaborated within the scope of the construction management.

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 her/his address and scope of services to the Architect.

C 4.6 - OTHER ADDITIONAL SERVICES (LIST NOT EXHAUSTIVE)

C 4.6.1 CLIENT SUPPORT SERVICES

- Assist with the project brief development
- 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
- Determination of operating and maintenance costs, implementation of management system proposal
- Technical assistance to the Client in the event of disputes with third parties to this Agreement.
- Assist the Client to carry out the technical and economic feasibility study of the different energy supply solutions under clauses R 111-22 and R 131-27 of the Code de la Construction et de l'Habitation.

C 4.6.2 DESIGN AND DESIGN TEAM SERVICES

- Calculation of floor areas (N° 96.1107 Carrez Act 1996);
- Impact Studies
- Initiate the consultation and information for users or the public;
- Existing conditions survey concerning the area and habitability standards of housing financed by means of government regulated loans (Bylaw 01/03/78 amended);
- Design, definition and choice of specific furniture or technical plant, interior design, space planning;
- Way finding design;
- Provision of technical details to prepare commercial documents, descriptive notices, presentation reports, pre-sales, sales plans;
- Provision of technical details necessary to prepare co-ownership regulations;
- Fire security systems service;
- Specific inspections of the execution of certain Works requiring permanent site presence;
- Health and Safety (separate appointment: refer clause C 2.3)
- Seismic studies

C 4.6.3 OTHER SERVICES

- Sites Commission File
- National Monuments File
- Commission d'Aménagement Commercial File (CDAC or CNAC)
- Various files (ANAH, etc.)
- Performance label and/or certification file

C5 PROFESSIONAL FEES

C 5.1 - PROFESSIONAL FEE BASIS

For the Appointment, the Architect is paid exclusively by the Client in the form of fees in accordance with the provisions in clauses C 5.1.1, C 5.1.2, C 5.1.3 here below or a specific method agreed by the Parties and stipulated in the Memorandum of Agreement.

Irrespective of the basis of fee calculation, direct expenses incurred by the Architect within the scope of her/his Appointment (including the cost of professional indemnity insurance) are charged extra in addition to the fee unless the Memorandum of Agreement stipulates that they are included in the fee calculation. As defined and detailed in the Fee Schedule, these expenses are confirmed by a written memorandum.

The disregard by the Contractor of her/his obligations is without incidence on the Architect's right to receive her/his fees under the provisions of this Agreement.

C 5.1.1 - LUMP SUM FEE CALCULATION

The lump sum fee is determined and agreed between the Parties on signing the Agreement, on the basis of the estimation by the Architect of the time spent that takes into account:

- the complexity of the project such that s/he could appraise from the project brief and information provided by the Client
- the scope and extent of the Appointment that s/he is confided, and
- her/his practice hourly rate.

Direct expenses and any specific disbursements are added to this fee as defined in clause C 5.6, unless special provision in Memorandum of Agreement.

In the event of financial penalties under the provisions of clause C 5.4, the penalty amount is deducted from the lump sum fee.

The fee amount is revised under the provisions in clause C 5.2 and re-evaluated under the circumstances and the provisions stipulated in clause C 5.7.

In the event of abandon of the Appointment, the fees due are calculated based on the value of the services recorded in the Fee Schedule of the Memorandum of Agreement, and their advancement. If necessary, the fee amount is increased by the compensation stipulated in clauses C 9.1.2 and C 9.3.

C 5.1.2 - PERCENTAGE FEE CALCULATION

The Architect's fee is a percentage, agreed on signature of the Appointment, applied to the final contract sum excluding VAT, as a result of the Final Payment Certificate for all building contracts and, if necessary, when carried out by the Client or others, increased by the basic cost of construction as if executed by a Contractor, To these fees are added the direct expenses and any specific disbursement as stipulated in clause C 5.6, unless special provision in Memorandum of Agreement.

In the event of financial penalties under the provisions of clause C 5.4, the penalty amount is deducted from the fee amount.

The fee amount is revised under the provisions in clause C 5.2 and re-assessed under the circumstances and the provisions in clause C 5.7.

In the event of abandon of the Appointment, the fees due are calculated based on the value of the services recorded in the Fee Schedule of the Memorandum of Agreement, and their advancement.

In case of abandon of the Appointment during construction, the fee rate is based on the total contract sum of building contracts awarded or alternatively, the amounts from the tender action.

In case of abandon prior to awarding building contracts, the fee rate is based on the final estimate of the projected cost of construction excluding VAT, established by the Architect at the end of the Developed Design Stage or, if the Agreement is terminated prior to this Stage, the initial budget excluding VAT of constructions as estimated by the Architect.

If necessary, the fee amount is increased by the compensation stipulated in clauses C 9.1.2 and C 9.3.

C 5.1.3 - TIME CHARGE FEE CALCULATION

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

The Fee Schedule defines, in particular, the hourly rates of the Architect and his employees or the average hourly rate of the practice including all the overheads.

To these fees are added the direct expenses and any specific disbursements as stipulated in clause C 5.6, unless special provision in the Memorandum of Agreement.

In the event of financial penalties under the provisions of clause C 5.4, the penalty amount is deducted from the fee amount.

The fee amount is revised under the provisions in clause C 5.2 and re-assessed under the circumstances and the provisions stipulated in clause C 5.7.

In the event of abandon of the Appointment, the fees due are calculated based on the value of the services recorded in the Fee Schedule and their advancement.

C 5.2 - FEE REVISION

If $Im > Io$, excluding expenses, during the Appointment, fees are to be revised in accordance with the following formula:

Final amount = $(Fo \times 15 \%) + (Fo \times 85 \% \times Im/Io) + (Fe-Fi)$, in which

- **Fo** = Initial fees exclusive of VAT

- **Io** = Engineering index of the month indicated in article M 6.4 of the Memorandum of Agreement

- **Im** = Engineering index of the month at completion of each Appointment Work Stage

C 5.3 - VALUE-ADDED TAX

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

C 5.4 - PENALTIES APPLICABLE TO THE ARCHITECT FOR ANY DELAY IN PERFORMANCE OF HER/HIS APPOINTMENT

In event of delay due to the Architect in the issue of documents of each Work Stage whose deadlines are recorded in articles M 5.1.1, M 5.1.2 of the Memorandum of Agreement, the Architect incurs a discharge penalty equal to 1/1000th of the Work Stage concerned for each day late, up to a maximum 5% of the Work Stage fee, unless stipulated otherwise in the Memorandum of Agreement.

However, penalties calculated on a provisional basis will not be applied if the Architect finally meets the overall deadline.

C 5.5 - TERMS OF PAYMENT

G 5.5.1 - ÉCHÉANCES ET DÉLAIS DE RÈGLEMENT

C 5.5.1 - TERMS AND SCHEDULE OF PAYMENT

Fees are payable in accordance with the advancement of the Appointment unless otherwise stipulated in article M 6.6.1 of the Memorandum of Agreement.

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

The Client settles the sums due to the Architect for the duration of her/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 invoice, unless otherwise stipulated in article M 6.6.2 of the Memorandum of Agreement.

C 5.5.2 - LATE PAYMENT COMPENSATION, INTEREST ON ARREARS, RECOVERY AND ACCOUNTING EXPENSES

Any late settlement entitles payment of compensation of 3.5/10,000th of the sum due exclusive of VAT per calendar day unless another compensation is stipulated in article M 6.5.2 of the Memorandum of Agreement. This compensation is due without prior formal notice.

In the event of disagreement over the amount of an invoice, payment is made on the provisional basis of the amount acceptable to the Client, who has to justify his disagreement in writing within 15 days. If uncontested during this period, the invoice is considered as accepted and is immediately due. When the sums already paid are less than those that are finally due to the Architect, s/he is entitled to the late payment compensation calculated on the balance.

C 5.6 - DISBURSEMENTS AT CLIENT EXPENSE

Other than the direct expenses defined in the Fee Schedule, the cost of photographic or graphic documents of the site, models, perspectives or specific documents and the cost of any items requested by the Client, other than those required by the execution of the Appointment, are reimbursed by the Client. They are due for payment on request subject to a written memorandum.

C 5.7 - CONTRACT VARIATIONS - ADDITIONAL SERVICES OR RESPONSIBILITIES

Any modifications to the Appointment, any changes to the project brief or the construction programme, any modification to approved documents, any change in procurement process 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 changes, 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 extension of the construction programme caused by the Contractor gives rise to the payment of additional fees to allow the Architect to extend her/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 terms and conditions of the building contract.

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

C6 RIGHTS AND OBLIGATIONS OF THE PARTIES

C 6.1 - CLIENT'S RIGHTS AND OBLIGATIONS

C 6.1.1 - RESPECT FOR THE ARCHITECTURE ACT 1977

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' Professional Code of Conduct 1980.

S/he cannot object to the Architect's obligation to declare to the Conseil Régional of the Ordre des Architectes or to the government department responsible for architecture, her/his projects subject to 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 - PAYMENT GUARANTEE OF THE CONTRACTOR

The Client confirms to have been informed of the obligation to guarantee payment to the Contractor of the amounts due that exceed 12,000 euros under the provisions of clause 1799-1 of the Civil Code.

C 6.1.3 - ASSIGNMENT OF THE AGREEMENT

Unless otherwise stipulated, the Client is committed to the Architect for the duration of the project as described in the Memorandum of Agreement.

The Client is not allowed to transfer her/his right to build and, in particular, to transfer the planning consent to a third party:

- before transfer of the present Agreement to any natural 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 compensation due to the Architect in compliance with clause C 9.1 here below.

C 6.1.4 - APPROVAL OF ARCHITECT'S DOCUMENTS

The Client reviews the documents that the Architect submits for his approval at the end of each Work Stage. 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, unless stipulated otherwise in the Memorandum of Agreement. This period can be reduced on the express request of the Architect due to a particular degree of emergency. If uncontested during the stipulated period, the approval is considered to be accorded.

C 6.2 - ARCHITECT'S RIGHTS AND OBLIGATIONS

C 6.2.1 - EXÉCUTION OF APPOINTMENT

The Architect serves the interests of the Client provided they do not contradict the law, the general interest and her/his Code of Professional Conduct. S/he monitors compliance with the regulations related to the project. S/he is forbidden to receive any remuneration from Contractors or any other Party.

C 6.2.2 - ARCHITECTS IN ASSOCIATION

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

The Agreement is not interrupted 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 the documents concerning each Work Stage as well as all relevant information on the progress of her/his Appointment

If the Client's budget is clearly insufficient for the undertaking of the proposed construction works, the Architect should promptly inform her/him.

During the design studies, the Architect informs the Client of any significant change in the initial construction budget.

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

C 6.2.4 - RIGHT TO POSSESSION

Both on her/his plans and design studies as well as documents which were entrusted to her/him by the Client, the Architect has a right to possession until the actual payment of her/his fees and any late interest payments 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 her/his professional liability, such as defined, in particular, in clauses 1792, 1792-2, 1792-3 and 1792-4-1 of the Civil Code within the limits of the Appointment which is confided to him.

Consequently, s/he cannot be held responsible in any way, neither jointly and severally, nor for the damages attributed to the other Parties participating in the project.

The Architect bears the financial consequences of her/his liability within the guarantee limits stipulated in her/his professional liability insurance contract.

The Architect is insured against the financial consequences of her/his professional liability with the insurance company and by the policy recorded in the Memorandum of Agreement. This policy is in compliance with the insurance obligations required by the Architecture Act 1977 and by clauses L 241-1, L 243-1-1 and L 243-9 of the Insurance Code, as well as the standard clauses stipulated in Appendix I of clause A 243-1 of the same Code.

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

For projects the cost of which exceeds the amount recorded on professional insurance certificate delivered by the Architect, the Client agrees to take out a group 10-year liability insurance policy. This group insurance contract is to complement the 10-year liability insurance guarantees provided by insurance policies held each Party in the project under the provisions stipulated in clauses R 243-1, R 243-2 and R 243-3 of the Insurance Code.

C 6.3.2 - CLIENT INSURANCES

The Client declares to have been informed by the Architect of the obligation to subscribe, before the commencement of construction, a construction insurance for the Works, under the circumstances and limits stipulated in clauses L 242-1, L 243-1-1 et L 243-9 of the Insurance Code. This insurance covers 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. It applies to existing Works (that is to say, to the parts of the existing building before the commencement of construction that belong to the Client) which, become technically indivisible, when fully incorporated into the new structure.

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

- the damages sustained to the building during the construction work;
- the damages sustained by the existing buildings which are not covered under the construction insurance defined in the first paragraph above and which result from the carrying out of the Works; and
- the damages caused to adjoining premises due to the construction work (i.e. caused to adjoining buildings or to parts of the existing building before the commencement of construction and do not belong to the Client).

C 6.4 - INTELLECTUAL PROPERTY

C 6.4.1 - ARCHITECT'S MORAL AND SUCCESSION RIGHTS OVER HER/HIS WORK

The Architect's right of ownership over her/his work is based on 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 her/his work, as author, the Architect enjoys the right to the respect for her/his name, her/his function and her/his work. This right is attached to her/his person. It is perpetual, inalienable and the statute of limitations does not apply. At the death of the author, it is transmitted to her/his heirs.

In particular, the Architect has the right:

- to sign her/his name on his work, whether it is design studies and plans or the actual building and to insist that her/his name be displayed there;
- to see her/his name and profession on the publication of plans or photos of the building; and
- to object to the modification of her/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 terms of payment for reproduction rights, e.g. in form of a proportional participation in receipts resulting from the sale or the exploitation.

C 6.4.2 - CLIENT'S RIGHTS

Unless otherwise stipulated in the Memorandum of Agreement, the Client is entitled to construct, in a single unique example, the project that is the subject of the present Agreement.

Subsequently, s/he may undertake any alterations or modification of the Works providing that s/he gives the Architect prior notice and does not denature the Work.

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

C 6.5 - PATENTS AND PROTOTYPES

C 6.5.1 - PATENTS

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

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

C 6.5.2 - PROTOTYPES

The present Agreement does not apply to 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 Appointment is confided to the Architect, the Client consults and informs the users, the neighbours and the public. S/he assumes all the tasks that result.

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

C 6.6.2 - RELATIONS WITH THE ADMINISTRATION AND PUBLIC UTILITIES

The Client signs documents prepared by the Architect, prepares and issues applications to the services concerned. S/he follows up the application, informs the Architect of the result of her/his actions, informs her/him of the recommendations formulated and issues her/him a complete copy of the applications and approvals delivered.

The Architect assists the Client in her/his relations with the administration or public utilities.

C 6.6.4 - RELATIONS WITH CONTRACTORS

The relations between the Client and the Contractor are defined in Section 3 of the present Memorandum of Agreement and the building contract.

Furthermore, the Client declares to have been informed by the Architect of the obligations binding her/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 her/his sub-contractors accepted and their terms of payment agreed by the Client; and
- in default of direct payment to the sub-contractors by delegation, the Client should insist that the Contractor provides evidence that it has provided a personal and joint and severally guarantee from a financial establishment to secure the sums that they are due.

C7 SUSPENSION OF APPOINTMENT

The Client can request the suspension of the Appointment. It can also be requested by the Architect if because of the Client, and in particular, in the event of late payment of fees due, non-respect of deadlines by the Client, or because outside events hinder the progress of the project, her/his Appointment cannot continue under the provisions of the present Agreement.

The Party who requests or claims suspension notifies the other Party.

The suspension can be given only after formal notice remains unheeded within 30 calendar days of receipt by the other Party.

In the event of suspension for late payments, the fees are then paid in proportion to the services performed and expenses advanced, with application of a 10% increase calculated on the total fee amount stipulated in the Agreement. The provisions of clause C 5.5.2 apply.

When the Appointment resumes, the fees already paid are deducted from the total fee amount with the exception of the aforementioned increase. If necessary, an amendment specifies the terms and conditions for the resumption of the Appointment.

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 Agreement is considered terminated and the provisions of clause C 9 apply.

C8 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 her/his Appointment, termination of the contract is issued, unless the Client agrees to continue the Agreement with entitled architects.

On request of the Client, the Conseil Régional may propose a list of architects geographically near to the project the Client may require to succeed the unavailable architect, for a new Appointment in compliance with the provisions of clause 22 of the Architects' Code of Professional Conduct.

C9 DETERMINATION OF AGREEMENT

This Appointment may be terminated under the terms and conditions here below.

Any formal notice under the present Appointment is undertaken by means of a registered letter with recorded delivery. Unless otherwise stipulated, any formal notice time period is counted from the date of its receipt by the defaulting Party.

C 9.1 - TERMINATION BY MUTUAL AGREEMENT

The Parties may jointly decide the termination of this Agreement by amendment or a settlement agreement. Compensation terms of the Architect are determined amicably by the Parties in the amendment or settlement agreement.

In the absence of agreement, termination is determined under the provisions here below.

C 9.2 - TERMINATION ON THE CLIENT'S INITIATIVE

C 9.2.1 - TERMINATION DUE TO ARCHITECT'S FAULT

In the event of fault of the Architect, that is, for any breach or infraction by the Architect of the provisions of this Agreement, the Client can decide to terminate this Agreement.

The Client issues a formal notice to the Architect to comply with her/his obligations and to immediately end the defaulting situation within not less than 15 days, except in the event of an emergency.

Within the time period fixed by the formal notice, if from the date of receipt thereof the Architect does not comply with this notice, then the Client may order the termination of the Agreement.

In this event, the Architect is entitled to payment:

- of a fee that corresponds to services performed and expenses incurred at the date of termination in compliance with clause C 5.1 of this Agreement and the Fee Schedule.
- of interest on arrears stipulated in clause C 5.5.2.

However, the Architect can not claim any compensation for termination of all or part of the fees that would have been paid to her/him if her/his Appointment had not been prematurely interrupted.

C 9.2.2 - TERMINATION WITHOUT ARCHITECT'S FAULT

The Client may terminate the Agreement before its normal term for a reason other than a fault of the Architect.

In this event, the Architect is entitled to payment of:

- a fee that corresponds to services performed and expenses incurred at the date of termination in compliance with clause C 5.1 of this Agreement and the Fee Schedule.
- the interest on arrears stipulated in clause C 5.5.2; and
- the termination compensation equal to 20% of that part of fees that would have been paid if her/his Appointment had not been prematurely interrupted.

C 9.3 - TERMINATION 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 interference of the Client in the performance of her/his Appointment;
- the emergence of a situation susceptible to compromise the Architect's independence or in which her/his private interests could be considered in preference to those of the Client;
- the impossibility for the Architect to respect good practice, her/his code of ethics or any legal or statutory provisions;
- the choice imposed by the Client of a contractor not possessing 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.

The Architect issues a formal notice to the Client to comply with her/his obligations and to immediately end the defaulting situation, within not less than 15 days, except in the event of an emergency.

Within the time period fixed by the formal notice, if from the date of receipt thereof the Client does not comply with this notice, then the Architect may order the termination of the Appointment.

In this event, the Architect is entitled to payment:

- of a fee that corresponds to services performed and expenses incurred at the date of termination in compliance with clause C 5.1 of this Agreement and the Fee Schedule.
- of interest on arrears stipulated in clause C 5.5.2.

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

C 9.4 - AUTOMATIC TERMINATION

The contract is automatically terminated by the Party that is neither defective nor in breach of its obligations one month after formal notice has remained unheeded, in any event of default or breach by the other Party of the provisions of this Agreement.

The termination is notified by registered letter with recorded delivery and contains the declaration of the interested Party wishing to benefit from this provision.

C10 DISPUTE RESOLUTION

In the event of disputes concerning compliance with the provisions of the present Agreement, the Parties agree to consult the Conseil Régional of the Ordre des Architectes where the Architect is registered, before any legal proceeding, other than that of preventive action. The Conseil Régional may either issue an opinion on the dispute or instigate an amicable settlement procedure.

For the recovery of fees, referral to the Conseil Régional is optional.