

# CONDITIONS OF CONTRACT FOR GEOTECHNICAL AND ENVIRONMENTAL CONSULTANCY



## DEFINITIONS

“**Agreement**” means these Conditions of Contract for Geotechnical and Environmental Services, together with the accompanying Proposal.

“**Client**” means the individual or organisation with whom this Agreement is made and indicated by that Party's acceptance of the Proposal.

“**Consultant**” means Land Science Limited of The Old Police Station, Jobs Lane, Sayers Common, BN6 9HE.

“**Final Calculated Price**” means the price (excluding VAT which is to be added at the rate prevailing at the time of invoicing) that is calculated for the Services on the basis of time and materials, in accordance with the rates set out in the Proposal, and which shall be submitted to the Client at the Completion of the Services.

“**Force Majeure**” means war, acts of foreign enemies, terrorism, revolution, riot, civil commotion, fire, flood or other natural disaster, radioactive contamination or any other circumstance whatsoever beyond the reasonable control of either Party.

“**Limit of Liability**” is the maximum amount of liability of the Consultant under this Agreement, as set out in clause 8.4.

“**Parties**” means the Consultant and the Client and “**party**” shall mean either the Client or the Consultant.

“**Proposal**” means the proposal(s) submitted by the Consultant detailing the Services that the Consultant intends to provide for the Client.

“**Relevant Information**” means all information in the possession or control of the Client or otherwise available to the Client relating to the Services and the Site, including but not limited to structures, tanks, utilities, pipelines, discharges, spillages, leachate and hazardous substances on, under or near the Site together with all plans, surveys, reports, hydrographic data, previous geotechnical or environmental investigations and any other relevant data known to the Client.

“**Report**” means the report(s) created by the Consultant describing the result of the Services and related matters.

“**Service Product**” means the Proposal, Report and all charts, tables, drawings, graphs, opinions, advice and recommendations, written or oral, made by the Consultant pursuant to the Services.

“**Services**” means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement.

“**Site**” means the area(s) in which the Services or any part of the Services are to be provided by the Consultant and as detailed in the Proposal.

## 1.0 CONSULTANT'S DUTIES

- 1.1 Subject to the terms of this Agreement, the Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and in accordance with the standards of a qualified and competent environmental consultant experienced in carrying out work of a similar scope and complexity to the Services and current at the time when the Services are performed.
- 1.2 The Consultant will perform the Services generally in accordance with the Proposal, but reserves the right to vary the Services if it appears to the Consultant reasonably necessary to do so either as a result of Site conditions, environmental or health and safety factors, or the discovery of any other information, which has a material effect on the Services. In the event of a variation in the Services due to the reasons described above or in the event that the Client requests a variation to the Services, the Consultant shall notify the Client promptly of the costs of such variations and the Client shall pay such additional costs incurred at the rates set out in the Proposal, or for such agreed sum as agreed between the Parties in writing.
- 1.3 The Consultant will take all reasonable precautions to avoid damage to property belonging to the Client or any third party, including underground services and structures, subject always to clauses 2.1 and 8.5.
- 1.4 The Consultant may use sub-contractors, sub-consultants and/or agents and the Consultant shall ensure that they are appropriately skilled and experienced in relation to the work which they are instructed to carry out.
- 1.5 The Client acknowledges that the Services and the Service Products will not necessarily reveal all adverse or other material conditions at the Site that could be identified either through a different formulation of the Services or through more detailed work being carried out by the Consultant.
- 1.6 At the Completion of the Services the Consultant shall back-fill any investigative positions such as trial pits of boreholes and shall leave in a safe condition. The Consultant shall not be responsible for making good any damage to surfaces unless explicitly agreed to by the Consultant in the Proposal.
- 1.7 Unless specified in the Proposal the Services shall not include any assessment of asbestos containing materials, invasive plant or animal species, protected animal species, or mould infestations.
- 1.8 Unless specified in the Proposal the Services shall not include the costs of dealing with any protected species that may occupy the site or the vicinity prior to, during, or after any investigation.
- 1.9 Normal site working hours are 8:30am to 5:00pm Monday to Friday excluding public or other holidays. Any site works required outside these hours at the behest of the Client may attract additional premiums or other costs, to be arranged with the Client.
- 1.10 Unless expressly stated in the Proposal, the Services shall be performed on the basis of time and materials and with the provision of a Final Calculated Price at the completion of the Services. Unless expressly stated on the Proposal the proposed rates and costs stated in the Proposal shall not constitute a Lump Sum Price.

## 2.0 CLIENT'S OBLIGATIONS

- 2.1 The Client acknowledges that in agreeing to provide the Services, the Consultant has relied upon the Client to make full disclosure of all Relevant Information. The Client shall provide promptly to the Consultant any new Relevant Information, which becomes available or any other information, which may materially affect the Services.
- 2.2 The Client shall provide free access to the Consultant to any Relevant Information and authorises the Consultant to take photographs, copies and samples of any Relevant Information for the purpose of providing the Services.
- 2.3 The Client shall, at its own expense, promptly provide free access to the Site or where the Client is not the Site owner, use its best endeavours to procure such access. The Client shall be responsible for ensuring that all regulatory permits and permissions from any relevant third party are in place to enable the performance of the Services. The Client shall be responsible for ensuring the Site is secure at all times during the performance of the Services and shall indemnify the Consultant in full for all losses to property owned or otherwise held by the Consultant at the Site as a consequence of any breach of Site security.
- 2.4 The Client shall inform the Consultant if there are any special circumstances at the Site that are likely to restrict the use or selection of plant or equipment by the Consultant in the performance of the Services. The Client shall be liable for any reasonable additional costs where such restrictions are not advised in good time.
- 2.5 If the Client suspects at any time that any part of the Services is not being performed in accordance with the terms of this Agreement, the Client shall immediately notify the Consultant and allow the Consultant reasonable time to take any reasonable agreed corrective action as appropriate.
- 2.6 The Client acknowledges that the disclosure of the report by the Client to any third party may give rise to action by a regulatory body or other third party in relation to the Site and no liability shall attach to the Consultant as a result thereof.
- 2.7 Subject to clause 8.6 the Client shall indemnify the Consultant in full for any damages or losses suffered as a result of any breach by the Client of this clause.
- 2.8 The Client shall be responsible for keeping any monitoring wells installed by the Consultant in good condition within any necessary monitoring period and shall be responsible for any repairs that may be necessary except where such damage is attributable to any act of the Consultant.

## 3.0 HAZARDOUS WASTE AND SAMPLES

- 3.1 The Consultant shall take from the Site such samples as it considers necessary for analytical purposes. Such samples, whether contaminated, hazardous or inert, shall be disposed of by the Consultant at any time after one month from the completion of the Services.
- 3.2 Any other hazardous substances or contaminated wastes present at the Site shall remain the property and responsibility of the Client.

## 4.0 USE OF RELEVANT INFORMATION

- 4.1 All Relevant Information shall be returned to the Client after use or completion of the Services by the Consultant or termination of this Agreement under clause 11, provided that the Consultant shall have the right to take copies of any Relevant Information for its own records, subject to the confidentiality obligations in clause 6.

## 5.0 COPYRIGHT IN SERVICE PRODUCTS, RELIANCE ON REPORTS AND ASSIGNMENT

- 5.1 Copyright and all intellectual property rights in Service Products shall remain vested in the Consultant at all times.
- 5.2 After payment of the Final Calculated Price, the Consultant shall grant the Client a royalty-free licence to reproduce the Report for the Client's own use, provided always that the Report shall be used exclusively for its originally intended purpose as stated by the Consultant in the Report.
- 5.3 The Client may without further charge make the Report available to any third party provided that such third party may not rely upon the Report unless it enters into a Reliance Agreement under clause 5.4.
- 5.4 No third party may make any reliance on the Report in whole or in Part unless the Consultant, at its discretion and by prior arrangement with the Client, enters into an agreement ('Reliance Agreement') with the third party who agrees, inter alia, to be bound by the same conditions and limitations as the Client, following which (subject to payment of any fees due to the Consultant by the third party) the third party shall be entitled to rely upon such Report exclusively for its originally intended purpose. The Consultant has the right to charge a reasonable fee for entering into the Reliance Agreement.
- 5.5 The Client acknowledges that the Consultant may withdraw any reliance or warranty in the Service Product or Report(s) in case of non-payment and that the Consultant may to this effect contact third parties including regulators to inform them in this respect.

## **6.0 CONFIDENTIALITY**

6.1 The Parties will treat the details of this Agreement and any written or oral information about the Services, including the Service Products, as private and confidential and neither of them shall publish or disclose any detail thereof to any third party except as permitted in this Agreement. This duty of confidentiality shall not apply to information which a Party can show by reasonable documentary proof: (a) to have been in the public domain at the time of receipt by such Party; or (b) to have become known to the public through no fault of such Party after receipt thereof; (c) or is required to be disclosed pursuant to applicable laws or a legally binding order of any competent judicial governmental or regulatory body. Before the disclosure of any information, the disclosing Party will (to the extent permitted by law) inform the other Party of the circumstances and the details of the information to be disclosed at the earliest possible opportunity.

## **7.0 PAYMENT**

7.1 Unless agreed in writing by the Parties (where it may be agreed that an advance or part payment shall be made prior to or during the performance of the Services) the Consultant shall submit invoices on completion of the Services.

7.2 Where it has been agreed that the Consultant shall receive an advance payment prior to the commencement of the Services but the Client subsequently decides not to proceed, or is unable to proceed with the Services, then the Consultant shall refund the advance payment less any costs incurred by the Consultant.

7.3 The Client shall pay for invoices in full no later than fourteen (14) days after the invoice date. Any queries regarding the invoice shall only be entertained within seven working days from the date of issue. The Client shall not be entitled to withhold payment or part payment of any amount payable under these conditions by reason or any claim or dispute by the Client.

7.4 The Consultant reserves the right to charge interest on overdue accounts at 8.0% above the base rate charged by Barclays Bank Plc during the period of any overdue invoice in accordance with the Consultants rights under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

7.5 Until full and final settlement of the account is made by the Client the Consultant shall provide no warranty or accept any liability for any report(s) or other information produced in connection with the Consultants services unless agreed to explicitly in writing by the Consultant prior to commencement.

7.6 The Consultant reserves the right to exercise statutory rights to repossess any information documents or reports, and to claim interest and compensation for costs suffered where payment is delayed or withheld. The Client agrees to reimburse any reasonable costs and expenses incurred by the Consultant in this respect.

## **8.0 LIABILITY OF THE CONSULTANT**

8.1 Subject to the other sub-clauses of this clause 8, the Consultant's liability shall be limited to the extent of any loss, damages, injury, expenses, costs (including legal costs) that are directly caused by the failure of the Consultant or any sub-consultant or sub-contractor to carry out the Consultant's Duties in accordance with Clause 1. If the Client becomes aware of circumstances which might give rise to a claim against the Consultant, it is a condition precedent to the liability of the Consultant that the Client shall give notice of such circumstances to the Consultant within sixty (60) days of the Client becoming aware of them.

8.2 The Consultant's liability under this Agreement shall end six (6) years from the date when the Services were completed.

8.3 Unless explicitly agreed to in writing prior to commencement, by the Consultant, the Consultant shall be entitled to make a reasonable additional charge to be agreed with the Client for providing a Collateral Warranty other similar binding agreement, or to extend the period of liability in clause 8.2 beyond a period of six years, or to extend the Limit of Liability in clause 8.4.

8.4 The aggregate Limit of Liability arising directly or indirectly from the Services and this Agreement whether under contract, tort or any other legal basis is five million pounds (£5,000,000) in the annual aggregate. No liability is accepted for sums in excess of this limit.

8.5 The Consultant shall not be liable for any damage to underground services and structures that are not notified to the Consultant in accordance with clause 2.1 or are not located as shown on any plans which are supplied to the Consultant by the Client or any third party and which the Consultant would be reasonably entitled to rely upon in providing the Services.

8.6 Neither Party shall be liable to the other for any loss of profit, loss of revenue, business interruption, or any indirect or consequential losses incurred by the other Party, whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering this Agreement.

8.7 Nothing herein shall exclude or limit the either Party's liability to the other in respect of any fraudulent misrepresentation made by it, or in respect of death or personal injury caused by its negligent errors, acts or omissions.

8.8 The Client agrees that the report(s) will be issued with our standard disclaimers relating to "Confidentiality and Limitations", and "Report Conditions", copies of which are available on request.

## **9.0 INSURANCE**

9.1 The Consultant maintains professional indemnity insurance provided such insurance is available in the market at commercially reasonable rates and terms, in respect of the Services and shall upon request provide evidence that such insurance coverage is provided up to the Limit of Liability.

## **10.0 FORCE MAJEURE**

10.1 Neither Party shall be liable for any delays or failure to perform any obligations because of Force Majeure. In the event of Force Majeure, both Parties shall use all reasonable endeavours to overcome any difficulties thereby arising and shall resume their respective obligations under this Agreement as soon as is reasonably possible.

10.2 If Force Majeure continues for more than ninety (90) days, either Party may terminate this Agreement by written notice to the other. The Consultant shall be entitled to charge the Client for all Services performed prior to the Force Majeure in accordance with the Price together with all expenses reasonably incurred by or accruing to the Consultant during the Force Majeure period.

## **11.0 TERMINATION**

11.1 Either Party may by written notice terminate this Agreement if the other substantially fails to perform its obligations under this Agreement, provided that the terminating Party has first given the other Party not less than ten (10) days written notice to the other specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.

11.2 The Consultant may by written notice terminate this Agreement immediately if the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or enters into liquidation (whether voluntary or compulsory) or if any proceedings are commenced relating to the insolvency or possible insolvency of the Client.

11.3 In the event of termination for any cause whatsoever, the Consultant shall be entitled to be paid for Services performed up to the date of termination.

## **12.0 NOTICES**

12.1 Any notice to be given by one Party to the other shall be served by sending such notice by post, or by hand to the addresses specified in the Proposal. Notices shall be deemed to have been received by the recipient Party as follows: (a) by post, four days after posting within the United Kingdom or within (b) ten days for posting outside the United Kingdom; (c) by hand, at the time of delivery.

## **13.0 SEVERABILITY**

13.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining parts of this Agreement shall remain in force and shall not in any way be impaired.

## **14.0 THIRD PARTY RIGHTS**

14.1 This Agreement shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 or right to rely on any Report unless the Consultant has entered into a Reliance Agreement with that third party in accordance with clause 5.4.

## **15.0 BINDING AGREEMENT**

15.0 This Agreement shall be binding upon the Parties upon the receipt by the Consultant of the written acceptance of the Proposal by the Client. In the event of cancellation by the Client within two working days of the commencement of the Services as specified in the Proposal then the Client shall be responsible for repayment of all costs incurred by the Consultant in connection with the Services.

## **16.0 GOVERNING LAW AND DISPUTE RESOLUTION**

16.1 If at any time any dispute, which cannot be settled amicably, arises between the Client and the Consultant in relation to this Agreement or in any way connection with the Services, the dispute shall be submitted to arbitration by a sole arbitrator. If the Parties cannot within fourteen (14) days of a proposal to do so or agree on an arbitrator, then the sole arbitrator shall be appointed by the President for the time being of the Institution of Civil Engineers. The arbitration shall take place in London and shall be conducted in English and according to the laws of England and Wales.

16.2 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

## **17.0 ENTIRE AGREEMENT**

17.1 This Agreement constitutes the entire agreement and understanding between the Parties.

17.2 The Client acknowledges that it has had an opportunity to negotiate changes to these Conditions of Contract for Environmental Consultancy Services and has agreed to these Conditions of Contract.

17.3 The Client acknowledges that, unless otherwise expressly agreed in writing between the Parties these Conditions of Contract apply to the exclusion of any other terms and conditions. The appointment of Land Science will constitute an acknowledgement of receipt of these conditions and that these conditions are to be incorporated into the appointment.