

Terms of Business

The Customer's attention is particularly drawn to the provisions of clause 7.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.8.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Order: the Customer's order for Services as set out in the Schedule of Plant

Order Form: the order form for the Services

Plant: any plant belonging to the Customer which will be subject to the Services including but not limited to the following:

(i) **Boiler and pressure plant:** those parts of the permanent structure of items described in the Schedule of Plant which are subject to steam or other relevant fluid pressure.

(ii) **Electrical and Mechanical:** all integrated parts of the items described in the Schedule of Plant including individual switch gear, isolators, control and starting equipment together with associated wiring relevant to the items of plant.

(iii) **Cranes and lifting plant:** all integral parts of the items described in the Schedule of Plant commencing at either the point of anchorage in the case of fixed stationary units or at the road or track wheels in the case of travelling or mobile units.

Renewal Date: the date 12 months from the commencement date and each 12 month anniversary thereafter unless expressly stated otherwise.

Schedule of Plant: the schedule of the customer's Plant

Services: the engineering plant inspection services supplied by the Supplier to the Customer as set out in the Schedule of Plant.

Supplier: PLANT RISK SERVICES LIMITED registered in England and Wales with company number 5008960

1.2 Construction. In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order or as agreed between the parties from time to time, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 For the avoidance of doubt, the provision of the Services under the Contract shall not include:

- (a) pre-commissioning inspections;
- (b) laboratory services;
- (c) consultation work,
- (d) the provision of written schemes;
- (e) load testing,
- (f) non-destructive testing,
- (g) thermographic testing;
- (h) checking of drawing or design;
- (i) examinations prior to purchase or sale;
- (j) return visits in excess of those specified in the Schedule of Plant or following repairs; or
- (k) any maintenance or repair of the Plant.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises as is necessary for the inspection of the Plant,
- (d) at his own expense have the Plant properly cleaned and prepared for examination and shall reassemble the Plant afterward
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (f) prepare the Customer's premises for the supply of Services and render all assistance reasonably required by the Supplier, its employees, agents, consultants and subcontractors in carrying out the examinations including the provisions of safe access where work at height is required;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (h) notify the Supplier of additions to the schedule of Plant or of Plant that is permanently withdrawn;
- (i) provide the Supplier, its employees, agents, consultants and sub-contractors with safe access to the Plant including but not limited to access platforms, scaffolding and safety lines;
- (j) provide the Supplier, its employees, agents, consultants and sub-contractors with any safety apparatus that is required by legislation or recommended in good health and safety practice within the Customer's industry and/or premises; and have in place up to date health and safety procedures relating to the Plant, its access and location including emergency rescue plans where applicable.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4.3 For the avoidance of doubt, it is the Customer's responsibility to ensure that any inspections that are required by law or any industry regulation to be undertaken by a set date are undertaken on time and the Supplier shall not have any liability whatsoever for any fines or penalties incurred by

the Customer as a result of any failure on the Customer's part to meet any such dates.

5. CHARGES AND PAYMENT

5.1 Subject to clause 5.2 the Charges for the Services shall be the annual fee (**Annual Fee**) quoted on the attached Order Form unless specified otherwise by the Supplier.

5.2 The Supplier reserves the right to revise the Annual Fee or invoice for the Customer for additional work in the following circumstances:

- (a) if the Supplier is required to undertake any additional work;
- (b) if upon initial inspection of the Plant it is apparent that the original Annual Fee quoted is incorrect;
- (c) the Supplier is required to provide the Services at the Customer's request outside normal working hours as defined in clause 5.3 or on a Saturday, Sunday or public holiday.
- (d) there is a change in the original instructions received from the Customer, any additional work will be charged on a time and materials basis based on the Supplier's standard daily fee rate from time to time.

5.3 The Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business days.

5.4 The Supplier shall be entitled to charge overtime at its then current rates on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.3.

5.5 The Annual Fee shall become payable on the dates specified in the attached Order Form.

5.6 The Annual Fee will be reviewed prior to each Annual Renewal Date, such review shall be based upon the Supplier's then charges, the Plant and the scope of Services to be provided.

5.7 The Customer shall pay each invoice submitted by the Supplier:

- (a) within [30] days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.9 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current base rate of Lloyds TSB Bank Plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5.11 The Supplier reserves the right to charge the Customer for the provision of copies of examination reports.

6. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 6 shall survive termination of the Contract.

Terms of Business

7. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.2 Subject to clause 7.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £250,000.
- 7.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.4 This clause 7 shall survive termination of the Contract.
8. **TERMINATION**
- 8.1 Either party may terminate this Contract by providing the other party with a minimum of one month's notice in writing. In such event the fee charged by the Supplier for the Services rendered up to the date of termination or renewal date whichever is the later shall be paid by the Customer.
- 8.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 30 days;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction
- to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(b) to clause 8.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(i), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
9. **CONSEQUENCES OF TERMINATION**
On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
10. **GENERAL**
- 10.1 Force majeure:
- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
 - (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than [eight] weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 10.2 Assignment and subcontracting:
- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.3 Notices:
- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
 - (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
 - (c) This clause 10.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this
- clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 10.4 Waiver:
- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 10.5 Severance:
- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 10.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 10.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 10.8 For the avoidance of doubt the Supplier is a subcontractor and does not in any way provide any financial advice or underwriting services. The Suppliers only business activity is the examination of engineering plant. The Supplier is not therefore subject to an regulation by the Financial Services Authority.
- 10.9 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 10.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.