

Terms & Conditions

1. Definition

In this document the following words shall have the following meanings:

- 1.1 'Agreement' means these Terms and Conditions together with the terms of any applicable Purchase Order.
- 1.2 'Client' means Five Rivers Environmental Contracting Ltd, Suite 2 Healey House, Dene Road, Andover, Hampshire, United Kingdom, SP10 2AA. Supplier
- 1.3 'Supplier' means the person or entity supplying the goods or services.
- 1.4 'Purchase Order' means the Clients written (which, for the purposes of this definition, includes electronic communications) instruction to the Supplier to supply Goods and / or Works, incorporating these conditions and (including the schedules) and the Specification, which provides a value payable by the Client to the Supplier, subject to any further change variation added to the Purchase Order in the form of an instruction to proceed.
- 1.5 'Site' means the location identified in the Purchase Order or the Supplier's quotation if not noted in the Purchase order, if any.
- 1.6 'Specification' means the Specification or Scope or Suppliers quotation, attached to or clearly referred to in the Purchase Order, to include all documents, standards and drawings therein referred to.
- 1.7 'Intellectual Property Rights' means: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.8 'Supplier Personnel' means any employee or persons provided by the Supplier to provide Works.
- 1.9 'Completion Date' means the date(s) for completion of the Works as set out in the Purchase Order.
- 1.10 'Contract' means together the Purchase Order and these Contract Conditions.
- 1.11 'Contract Sum' means the amount set out in the Purchase Order (exclusive of VAT) and payable by the Client to the Supplier for the carrying out and completion of the Works.
- 1.12 'Costs' means all direct costs incurred by the Supplier in preparation for and in carrying out the Works including, but not limited to, costs incurred in the planning process, equipment hire, materials and allocation of workforce calculated at the current workday rates of the Supplier.
- 1.13 'Practical Completion' means the completion by the Supplier of the Works in accordance with the terms of this Contract and to the satisfaction of the Client (except for any minor items of incomplete work or minor defects, the existence or rectification of which would not, in the opinion of the Client materially interfere with the beneficial use and/or enjoyment of the Works).
- 1.14 'Works' means the Works identified in the Purchase Order as the Works to be carried out by Supplier under the Contract including and/or taking account of any variations subsequently instructed by the Client.

2. General

- 2.1 These Terms and Conditions shall apply to any Purchase Order for the supply of goods and/or Works by the Supplier.
- 2.2 Where it is agreed that the Supplier shall supply goods and/or Works, the goods and/or Works to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order. All Purchase Orders shall be subject to these Terms and Conditions.
- 2.3 No changes or variations to these Terms and Conditions or any Purchase Order shall be effective unless agreed in writing in the form of an instruction to the Supplier (which includes electronic communications).
- 2.4 Unless clearly specified by the Client, they hereby appoint the Supplier to provide the Goods and/or Works to the Client on the terms and conditions with effect from the date of this Agreement.
- 2.5 This Agreement shall continue until the Works are completed unless this Agreement is terminated in accordance with Clause 7.

3. Price and Payment

- 3.1 The price and any taxes and expenses for the goods and/or Works shall be as specified in the Purchase Order.
- 3.2 An invoice shall be produced by the Supplier to the Client in accordance with the terms set out in the agreement, unless otherwise specified in the Purchase Order. The final date for payment shall be forty-five (45) days from the end of the month after the date the Invoice is submitted to the Client.
- 3.4 This Purchase Order is based on the Specification or Scope attached to or clearly referred to, to include all documents, standards and drawings therein.
- 3.5 Invoices are to be paid within 45 calendar days from the end of the month after the date the Invoice is submitted to the Client. Interest on all late payments will be charged per invoice at the Bank of England base rate plus a rate of 0.5% per day from the date the invoice becomes overdue until the date of payment.
- 3.6 The Supplier shall be entitled (without prejudice to any other right or remedy) to suspend performance of its obligations under this Sub-Contract by giving not less than 28 days' notice in writing to the Client stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Client makes part payment of the full amount due.
- 3.7 Retention money shall be held on all Purchase Orders at a rate of 5% of the Contract Sum, which will become payable 52 weeks after Practical Completion upon receipt of invoice.

4. Title

- 4.1 All goods, for whatsoever supplied, shall become the property of the Client upon receipt of this Purchase Order.

5. Supplier's Obligations

- 5.1 In performing the Works described in the Purchase Order, the Supplier will ensure the works and/or any good supplied will be fit for the Client's intended purpose and free from defects.

6. Status and Liabilities

- 6.1 The Supplier's total liability to the Client for all matters arising under this agreement, other than the excluded matters, remain unlimited and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.
- 6.2 The Supplier shall ensure that it holds and maintains insurance as follows:
 - (1) Public Liability (for an amount of not less than £10,000,000 per occurrence)
 - (2) Employer's Liability (for an amount of not less than £10,000,000 per occurrence)
 - (3) Professional Indemnity (for an amount of not less than £5,000,000 per occurrence)and any or all of Product Liability and Contractors All Risks as applicable and at market standards in respect of the Deliverables.

7. Termination

- 7.1 The Client may terminate this Agreement for any reason by providing 7 days prior written notice (inclusive of electronic communication) to the Supplier.
- 7.2 The Supplier may terminate this Agreement by providing 45 day prior written notice to the Client at the address listed on the Purchase Order if:
 - (1) the Client or the Clients Personnel commit any material breach of this Agreement;
 - (2) the Client fails to respond after three written reminders (with a reply period of 10 days each) and is having a negative impact on the time and/or cost of Works under this agreement.
 - (3) the Supplier may terminate their appointment in the event of the insolvency of the Client. In this agreement 'insolvency' shall mean either party becoming bankrupt going into liquidation (either voluntary or compulsory except as part of a bona fide scheme of reconstruction or amalgamation) being dissolved compounding with its creditors or having a receiver administrative receiver or administrator appointed for the whole or part of its assets.
- 7.3 In the event of termination under Clause 7.2, the Client, at their sole discretion, shall pay the Supplier an amount inclusive of all direct cost and fees due and commensurate with the Works performed to date of such termination. Termination of the Supplier's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

8. Intellectual Property Rights

- 8.1 The Supplier acknowledges and agrees that all Intellectual Property Rights and all other rights in the Works, the Deliverables and the Pre-existing Materials shall vest in and shall be and remain the sole and exclusive property of the Client.
- 8.3 If and to the extent that any of Intellectual Property Rights and other rights in the Works, the Deliverables and the Pre-existing Materials include or have been created, produced or developed using any Intellectual Property Rights belonging to a third party, Supplier shall use all endeavours to procure that the Client shall be licensed to use such rights.

9. Force Majeure

- 9.1 The Supplier shall be entitled to an extension of time to this agreement as may be fair and reasonable if the cause or causes of the delay are of a direct result of a Force Majeure event.
- 9.2 The following elements of Force Majeure as per below list are included into this agreement.
 - (1) Epidemic or pandemic or plague (as classified or advised by the World Health Organisation and/or the government of an affected country) including without limitation coronavirus disease (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations of COVID-19 and/or SARS-CoV-2 recognised as the same by the World Health Organisation.
 - (2) War, hostilities (whether war is declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, or civil war,
 - (3) Act of terrorism and action of the United Kingdom government in response to the threat of an act of terrorism to the extent that such act and/or action is not covered by the insurances provided by the Client,
 - (4) Riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving solely nor originating with the personnel or other employees of the Supplier or subSuppliers or the employees or subSuppliers of any SubSupplier's Group Company,
 - (5) Munitions of war or explosive materials, ionizing radiation or contamination by radioactivity (not originating with the Project), except where attributable to the Supplier's use of such munitions or explosives,
 - (6) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
 - (7) Any operation of the forces of nature which is Unforeseeable or against which a prudent and experienced Supplier could not reasonably have been expected to have taken adequate preventative precautions or
 - (8) Strike, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the Supplier SubSupplier or SubSuppliers.

10. Assignment

- 10.1 The Client shall be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

11. Severability

- 11.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed, and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

12. Waiver

- 12.1 No failure by the Client to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

13. Notices

- 13.1 Any notice to be given by the Client may be served by email, personal service or by post to the address of the Supplier listed in the Purchase Order or such other address as such party may from time to time have communicated to the other in writing, and if sent by



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email shall, unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

The Supplier must serve any notice to the Client by personal service or by post to the address of the Supplier listed in the Purchase Order or such other address as such party may from time to time have communicated to the other in writing. If given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

14. Entire Agreement

14.1 This Agreement contains the entire agreement between the parties relating to this subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

15. Governing Law and Jurisdiction

15.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

15.2 A change in the law of the country in which the Site is located is a variation if it occurs after the date of this agreement. The Supplier has a right under this agreement to submit an increase in cost if the change in law has an adverse impact on time and cost to the Supplier.

16. Working Hours

16.1 All Purchase Orders are based on the work being carried out during normal weekday working hours of 07:30 – 17:00. Should weekend, holiday or other extraordinary hours be required, must be agreed at least in advance with the Client.

17. Acceptance

17.1 Upon issue of this Purchase Order via email from the Client to the Supplier, the Contract will become binding.

18. Commencement and Completion

18.1 The Supplier shall commence the Works on the Commencement Date set out in the Purchase Order or following written instructions to do so from the Client, whichever is the earlier.

18.2 The Supplier shall proceed regularly and diligently with the Works and, subject to clause 20.4, shall complete the Works and each part of them by the Completion Date.

18.3 If the progress of the Works is being or is likely to be delayed by any circumstance or occurrence outside the control of the Supplier, the Supplier shall immediately notify the Client, specifying the cause of the delay and an estimate of the effect on the Completion Date. Provided that such notice is given within 5 days of the delay becoming reasonably apparent, the Supplier shall be entitled to such extension of the Completion Date as reasonably requested by the Supplier.

18.4 The Supplier shall notify the Client in writing when it considers the Works to have reached Practical Completion and the Client shall confirm within 14 days of such notification whether or not it agrees that Practical Completion of the Works has occurred. If the Client fails to provide such confirmation, Practical Completion shall be deemed to have occurred.

19. Cancellation

19.1 If the Client cancels the project, a cancellation fee will not be incurred.

20. Dispute Resolution

20.1 Any dispute arising out of or in connection with performance of the Works may be referred to adjudication in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998, S.I.1998/649 (as amended). The decision of the adjudicator will be binding on the parties, and they shall comply with it until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement between the parties. Unless otherwise agreed any dispute arising out of or in connection with performance of the Works shall be finally determined by the courts of England & Wales.

21. Variations, Extra Works and Day Works

21.1 If the Client wishes to make reasonable variations of the Works, the Client must notify the Supplier in writing inclusive of email format.

21.2 The value of variations required by the Client and any associated adjustment to the value and programme of the Works shall be agreed with the Supplier.

22. Contracts (Rights of Third Parties) Act 1999

22.1 Nothing in this Contract confers or purports to confer on any third party any benefit or right to enforce any term of the Contract which would not have existed but for the Contracts (Rights of Third Parties) Act 1999.



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