

Clarke's Environmental Limited

Terms & Conditions

1. DEFINITIONS

In the Conditions of Contract save where the context otherwise requires the following capitalised words shall have the meanings assigned to them: 'Acceptance' means the acceptance in writing by the Client of the Company's Quotation;

'Client' means the person or company to whom the Quotation to which these conditions are attached is addressed;

'Commencement Date' means the date from which the Company commences the Works being a date to be confirmed in writing by the Company;

'Company' means Clarke's Environmental Ltd;

'Conditions' means these Standard Terms and Conditions;

'Contract' means the agreement in respect of the provision of the Works consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:

- The Conditions;
- The Quotation to which these conditions are attached and any documents to which the Quotation refers;
- The Company's Acceptance;
- The Client's Order.

'Contract Price' means the price of the Works as set out in the Quotation. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of VAT;

'Contract Period' means the period set out in the Quotation for the completion of the Works and any extensions of time due under the Contract;

'Force Majeure' means any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action, protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies;

'Month' means a calendar month;

'Order' means the order made by the Client to the Company in accordance with clause 3.2;

'Quotation' means the document setting out the price for executing the Works issued by the Company to the Client;

'Site' means the location that the Works are to be carried out;

'Termination Date' means the date when the Company is to cease carrying out the Works;

'Week' means seven consecutive days;

'Working Day' means any Monday, Tuesday, Wednesday, or Thursday 8am to 5pm, or Friday 8am to 4.30pm which is not a bank or public holiday;

'Works' means the works described in the Quotation to be executed by the Company in accordance with the Contract and any reasonable variations to the works instructed by the Client in accordance with the Contract, together with all equipment required and any associated goods provided by the Company in relation to those Works.

2. GENERAL INTERPRETATIONS

2.1 In these Conditions of Contract unless the context requires otherwise:

- words importing any gender include every gender;
- words importing the singular number include the plural number and vice versa;
- words importing persons include firms, companies and corporations and vice versa;
- references to numbered clauses are references to the relevant clause in these Conditions;

2.2 Any requirements in the Contract for the Company to give or its consent or agreement means that the agreement or consent must be given in writing by an employee of the Company who has the necessary authority.

2.3 The headings to the clauses of this Contract are for convenience only and will not affect its construction or interpretation.

2.4 Any reference to any enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate regulation or bylaw made under that enactment.

3. CONTRACT FORMATION

3.1 The Client's Acceptance of the Company's Quotation shall be deemed to be his unconditional acceptance of the quotation in accordance with these Conditions superseding all prior communications, contracts, or agreements between the parties with respect to the Works, whether oral or written.

3.2 No conditions or stipulations in or attached to the Order which are additional to or inconsistent with these Conditions shall have effect unless expressly agreed by a director or other authorised representative of the Company in writing. In the absence of any such agreement by the Company, the Client shall be deemed to have withdrawn or waived such additional or inconsistent conditions or stipulations and the Contract shall be on these Conditions.

3.3 The Contract constitutes the entire agreement between the Client and the Company to the exclusion of all other terms and conditions including any other terms and conditions which the Client may purport to apply under any acknowledgment or acceptance unless expressly agreed by a director or other authorised representative of the Company in writing.

4. NOTICES

4.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the appropriate address or e-mail address notified to each other or as set out in the Quotation.

4.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Working Day in which case the date of service will be the following Working Day.

5. OBLIGATIONS

5.1 The Company shall carry out the Works in accordance with the Contract using reasonable skill and care and in a good and workmanlike manner.

5.2 The Company will use reasonable skill and care to avoid damage to the Client's property but shall not be liable for damage howsoever arising unless the Client proves such damage to be clearly and unambiguously due to the Company's negligence.

5.3 The Company shall comply with any and all legal and regulatory requirements applicable to the Works which are current at the date or dates on which the Works are carried out, including the requirements of all current health and safety and environmental legislation and related regulations, guidance and codes of practice.

5.4 The Client shall give the Company all details and information necessary to perform the Works, and the Company shall not be responsible for verifying the adequacy of such details and information. Upon receipt of the Company's Acceptance any such information or details must be provided forthwith failing which the Company may vary the Quotation to take account of any consequent increase in cost and/or vary the Contract Period.

5.5 The Client shall make the site available to the Company for the Commencement Date stated in the Acceptance and for the duration of the Contract Period.

5.6 Completion of the Works shall be the date on which all Works are completed with the exception of minor defects or work of a minor nature.

5.7 Where no Commencement Date is stated in the Acceptance, the Client will give the Company reasonable notice of the Commencement Date, provided that the Client acknowledges that such reasonable notice will take into account any notification periods that are required as set out in the Quotation.

5.8 The Company shall proceed to execute and complete the Works in accordance with any agreed programme or in the event that no date for completion or programme has been agreed within a reasonable period subject to any extension of time issued by the Client. Time shall not be of the essence unless otherwise stated;

5.9 The Company shall not be responsible for any delay in completion of the Works save where caused by the negligence or default of the company.

6. SITE PREPARATION

6.1 The Client shall ensure that the site of the Works is suitably prepared before the Commencement Date so that the Company can begin the Works on the agreed date. Such preparation shall include (but not be limited to):

- Ensuring that the Company will be able to cordon off the Site immediately on arrival on the Commencement Date;
- Providing free and unimpeded access to suitably sized areas for the de-contamination camp, skip lay-down etc., enabling access at all times to the designated areas for daily delivery/removal, where stated as required in the Quotation;
- Providing an adequate, uninterrupted water supply at a minimum of 3.5 bar for de-contamination units and working areas and also all necessary drainage from the de-contamination units and any other areas necessary to carry out the Works;
- Removing any items which are capable of removal from the Site;
- Isolation and disconnection of any live mechanical and electrical services and equipment within the confines of the Site including all necessary isolations disconnections and purging;
- Providing all necessary certification that the provisions of clause 6.1 (e) have been met;
- Providing a suitable, stabilised, uninterrupted electrical supply for work areas, exit/entry passages, de-contamination units, negative pressure ventilator units, and all other equipment/areas necessary to carry out the Works;
- Providing suitable, uninterrupted lighting in all designated areas the Works and exit/entry ways and external access/disposal areas;
- Ensuring that any pipework in or on ducts to be worked has been sufficiently cooled;
- Where stated in the Quotation that scaffolding is required, the Client shall supply and erect scaffolding, and shall be liable for the costs unless expressly stated otherwise in the Quotation;
- If the scaffolding provided in accordance with clause 6.1 (j) is to be erected in a live enclosure it shall be supplied and erected by a licensed contractor.

6.2 The Client shall reimburse the Company any loss and/or expense incurred by the Company as a consequence of the regular progress of the Works being affected by any matter whatsoever beyond the Company's reasonable control, including but not limited to any delay in starting the Works due to a breach of clause 6.1 (a)-(f) above.

6.3 Works will be carried out on Working Days unless expressly stated otherwise in the Quotation.

6.4 Unless expressly agreed otherwise by the Company in writing any Works executed on days that are not Working Days will be subject to an additional charge. The additional charges shall be valued at the rates agreed with the Client or in the event of no such rates being agreed rates shall be fair and reasonable in the circumstances.

7. LIABILITY

7.1 Notwithstanding any other clause in these terms the Company's total aggregate liability in contract, tort (including breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to 10% of the contract price.

7.2 The Company shall not be liable to the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused.

7.3 Nothing in these terms excludes or limits our liability for death or personal injury caused by our negligence, fraud or fraudulent misrepresentation; and any other matter which it would be illegal for us to exclude.

7.4 Save for any liability for death and/or personal injury, or in any other circumstances where liability may not be limited or excluded under any applicable law all liability of the Company in respect of the Works shall end on the earlier of:

- Confirmation of four stage clearance in accordance with HSE requirements through issue of the Certificate of Reoccupation by an independent party accredited by UKAS
- Issue of a waste consent note to the Client or their agent in a form approved by the Environment Agency
- signing of a form certifying that the Works have been completed by the Client or their agent
- 14 Days from the completion of the Works.

8. EXTENSIONS OF TIME

8.1. The Company shall be entitled to a reasonable extension of time to the Contract Period for any delays caused to the Works for reasons beyond the control of the Company including but not limited to: compliance with instructions of the Client; adverse weather conditions; civil commotion, wars, riots, lock outs, terrorism or the threat of terrorism; the Company's inability to secure labour or materials; obstruction of the Works by the Client; the Client's failure to make the site available to the Company; the carrying out of works by the Client, another company, a local authority or statutory undertaker; delays in receiving statutory approvals and/or acts of prevention by the Client.

9. CONTRACT PRICE

9.1. The Client shall pay the Company the Contract Price as set out in the Quotation or such other sum as shall become payable in accordance with the Contract.

10. VARIATIONS AND VALUATIONS

10.1 The Client may instruct reasonable variations to the Works and such variations shall be confirmed by the Client in writing.

10.2 If the Client fails to confirm a variation in writing the Company will not carry out the additional works.

10.3 Any additional or omitted works shall be valued at the rates agreed with the Client or in the event of no such rates being agreed such rates as shall be fair and reasonable in the circumstances.

11. PAYMENT

11.1 Unless otherwise agreed in writing between the Client and the Company payment for goods and services supplied by the Company must be paid no later than 30 days from the date of invoice. The Company may invoice the Client for the goods and/or services on or at any time after completion of the delivery of goods and/or services. Time for payment of the price shall be of the essence of the contract.

11.2 Payment shall be made in the currency of sterling unless otherwise agreed in writing by the Company and the Client.

11.3 Where only part of the goods and/or services are delivered by the Company, the Company may invoice the Client for the Contract Price attributable for that part.

11.4 No payment shall be deemed to have been received until the Company has received cleared funds.

11.5 The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement, or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.

11.6 Any overdue sums will bear interest from the due date until payment is made at 8% per annum over the Bank of England base rate, accruing on a daily basis, or, at our option, interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002) from the due date for payment until payment is paid in full, whether before or after any judgement, together with all costs and expenses incurred by us in recovering sums due or exercising our rights under this provision, including our debt recovery fees at a rate of 6% of the total debt outstanding.

11.7 If any payment falls into arrears, the Company shall have the right to cancel or postpone performance of the Contract wholly or in part.

11.8 If the Customer fails to make payment when due, then without prejudice to any other right or remedy available to the Company, the Company may demand payment of the entire amount of invoices issued to the Client, including invoices that would otherwise be within credit terms and such invoices shall then automatically fall due for immediate payment.

11.9 Credit accounts are opened at the discretion of the Company and are subject to satisfactory references. The Company will set a maximum

amount of credit allowable upon each account and withdraw credit facilities at any time without explanation. Payments made by the Client, may at the discretion of the Company restore the Client's ability to borrow again.

11.10 The Client agrees that the Company may obtain, retain and provide to third parties, references as to the financial standing of the Client.

11.11 Any change in the constitution of the Client's organisation must be notified to the Company prior to it occurring in order that credit facilities to the reconstituted organisation may be put in place, subject always to the discretion and confirmation in writing of the Company. Until new credit facilities are agreed, the existing entity and any new entity shall be jointly and severally liable for any debt due to us.

11.12 Without prejudice to any other rights of the Company, if there is reason to doubt that the amounts due from the Client will be paid in full according to the Contract then the Company reserves the right to require payment in full before delivering or performing any other work or services whatsoever for the Client.

11.13 All sums payable to the Company under the Contract shall become due immediately on termination of the contract despite any other provision.

11.14 The Client shall be required to pay VAT as VAT may become chargeable at the applicable rate at the date of any tax invoice.

12. TITLE AND RISK

12.1. Legal title in materials and goods supplied shall not pass unless and until payment for them has been received in full.

12.2. The risk in any goods supplied shall pass to the client when the same are delivered to the address at which the same are to be installed.

12.3. Until title in the materials and goods passes from the Company to the Client, the Client grants the Company an irrevocable licence to enter, with or without vehicles, any of the Client's premises for the purpose of inspecting or repossessing the goods whether or not the same have been installed.

13. INTELLECTUAL PROPERTY

13.1 The Client shall indemnify the Company against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world

13.2 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- provided to the Company by the Client shall remain the property of the Client;
- prepared by or for the Company specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Company subject to any exceptions set out in the Quotation or Acceptance.

14. CONFIDENTIALITY AND PUBLICITY

14.1 Any documents provided by the Company and information which the Client may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Company and shall not be disclosed disposed of or used for any purpose without prior written consent of the Company.

15. APPLICABLE LAW

15.1 The Contract shall be governed by the law of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

16. THIRD PARTIES

16.1 Nothing in the Contract confers or purports to confer on any third party and benefit or right to enforce any item of the Contract.

17. ASSIGNMENT

17.1 Subject to any express provision of this Contract, the Client shall not without prior written consent of the Company, assign all or any benefit, right or interest under this Contract.

18. INSURANCES

18.1 The Company shall have in place and maintain all relevant policies of insurance namely Employers Liability, Public Liability and Professional Indemnity Insurance where required. Whenever reasonably requested by the Client the Company shall produce for inspection, within 7 days, evidence that such policies of insurance are valid and are maintained.

19. TERMINATION

19.1 If the Client (being an individual) becomes bankrupt or insolvent or has a receiving order made against him or (being a company) is wound up or has a receiver, administrator or liquidator appointed or is subject to any similar proceeding, or if the Company shall be entitled at any time thereafter to terminate the Contract forthwith by written notice and, without prejudice to the Company's other rights and remedies, to enter onto the site of Works to collect forthwith all materials, goods, tools or articles of any description belonging to the Company which are under the possession, custody or control of the Client.

19.2 If the Company or the Client are in material breach of their obligations under the Contract, and fail to remedy such breach within 14 days of receiving written notice from the other party, the party alleging the breach may upon the service of a further notice in writing terminate the Contract.

19.3 The Client shall be liable to pay the Company such elements of the Contract Price, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the Termination Date.

19.4 In the event that the Client terminates the Contract where there is no material breach, or if the Company terminates the Contract due to the Client's material breach, then in addition any payment due under Clause 19.3, the Client shall be liable to pay the Company a proportional element of profit on those costs and any loss of profit on any part of the Works not completed upon the Termination Date of the Contract for any reason,

subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligations to the other under the Contract.

20. CANCELLATION

20.1. If the Client cancels the Contract or any part of the Contract after the Client has issued an Acceptance of the Quotation, the Client shall be liable to pay to the Company such elements of the Contract Price, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the cancellation. In the event that the Client cancels the Contract then in addition any payment due under clause 20.1, the Client shall be liable to pay the Company a proportional element of profit on those costs and any loss of profit on any part of the Works not completed upon the cancellation of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to cancellation, neither party shall have any further obligation to the other under the Contract.

21. FORCE MAJEURE

21.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

22. SEVERANCE

22.1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

23. DISPUTE RESOLUTION PROCEDURE

23.1 If a dispute arises between the Client and the Company in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

23.2 If a dispute is not resolved within fourteen (14) days of referral under clause 23.1 then either party may refer it to the director or appropriate nominated manager of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

23.3 If a dispute is not resolved in accordance with clauses 23.1 and 23.2, then the parties agree that either party shall have the right to refer the dispute to adjudication in accordance with the Construction Act. The Adjudication shall be conducted in accordance with the rules set out under the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended. The nominating body shall be the Royal Institute of Chartered Surveyors.