



## TERMS OF BUSINESS

### 1. Scope of Terms of Business

All work carried out by or at the responsibility of the Company (a "Project") for the person, firm or company commissioning the work (the "Client") is subject to these Terms. These Terms may be varied or excluded (in whole or in any part) by any proposal or tender ("Proposal") submitted by the Company to the Client or by subsequent express agreement in writing signed on behalf of the Company and the Client, but not otherwise.

The Proposal shall, unless otherwise stated therein, remain valid for 30 days from the date of the Proposal.

### 2. Commencement and Completion of Work

2.1 Unless otherwise stated in the Proposal, the appointment of the Company shall commence from the date of the Company's acceptance of the Client's purchase order, or from the time when the company shall have begun to perform for the Client any of the services specified in the Proposal, whichever is the earlier. The Client will co-operate with the company in all reasonable ways and will make freely available or place at the Company's disposal all facilities and personnel reasonably required by the Company to carry out the Project including (without limitation) where appropriate :

- Access to the Project site (the "Site").
- Services (electricity, water etc.) at the Site.
- Visas and permits for personnel and equipment to enter and leave the Client's country and site.
- Licences or permits for the work to be undertaken at the site.
- Office (and telephone and fax) at the Site.
- Site security.
- Assistance in arranging accommodation local to the site.
- Medical facilities on or near the Site.
- Information on special hazards or risks at Site or in relation to the Project material.

2.2 The Client shall (a) provide the company with all the data (presently or subsequently in the possession of the Client) relating to the Site and the Project (and the Client represents and warrants to the Company that having made due enquiry all such data is accurate to the best of the

Client's knowledge); (b) accurately indicate and mark for the Company the location of all property boundaries, easements, utilities and site conditions of which the Client has knowledge; (c) retain ownership of and take full responsibility for the generation, treatment, disposal and transport of any and all Hazardous Substances.

2.3 The Company shall not be obliged to work at the Site in dangerous, unhealthy or unsafe conditions.

2.4 If the Company is delayed in the Project by any act or default of the Client or any other party or by individual disputes or any cause beyond the reasonable control of the Company, including (without limitation) war, armed conflict, civil disturbance, act of God, explosion, accident, act of Governmental agencies or failure of third party suppliers, the completion of the Project shall be extended by a reasonable period and the Company shall be paid for any additional reasonable costs incurred attributable to the delay.

2.5 The Company shall make reasonable endeavours to supply the Results as defined below on the date agreed, but this date will be taken as a guideline for time planning purposes only. Time is not of the essence unless specifically agreed in writing with liquidated damages for late delivery fully defined before commencement of the Project.

### **3. Business Associates**

The Company shall take all reasonable steps to meet the wishes of the Client in the use of the Client's business associates but reserves the right to employ, discharge or replace at any time any business associate in carrying out the Project. References in the Proposal to the utilisation of a particular person as a business associate shall imply only that the company intends at the Proposal date to employ or retain such person but shall not imply that contractual arrangements have been made for such employment or retention for the entire contract period.

### **4. Company Personnel**

It is a condition of contract that the Client will not approach or contact, with the intention of employing or retaining, any employee of the Company engaged on or connected with the Proposal or the Project without the prior agreement of the Company. This restriction is to apply at all times during the project and for a period of 6 months following completion of the Project.

### **5. Disbursements to Third Parties (not applicable to fixed price contracts)**

A 15% charge may be made on all disbursements made by the company associated with the contract in order to cover administrative costs. The disbursements include but are not limited to subcontractors, freight and packing charges, out of pocket expenses and travel and accommodation expenses away from the normal place of business of the Company's personnel incurred in carrying out the Project.

### **6. Techniques**

The Company intends to employ methods, procedures, techniques, personnel and sources of information set out in the Proposal but reserves the right to vary these as necessary or desirable in order to achieve the aims of the Project.

## **7. Care, Diligence and Contractual Limitations**

7.1 All survey findings, forecasts, statements of opinion and recommendations in the Proposal or in any letter or report (the "Results") submitted by the Company to the Client on the work carried out under a Project are made in good faith, and on the basis of the information before the Company at that time. The Company warrants that it shall in the discharge of the services agreed to be performed by the Company, exercise all the reasonable skill, care and diligence normally provided by a professional person or firm in the performance of services similar to those provided for the Client and under the same terms and circumstances. All other warranties whether express or implied, statutory or otherwise are hereby excluded. If in the performance of these services the Company has a discretion exercisable as between the Client and a contractor, the Company shall exercise this discretion fairly.

7.2 In so far as the Results are based on observations, data and/or materials supplied by the Client or obtained by the Company from a third party the Company assumes no responsibility and makes no warranty or representation as to their correctness. All samples, material, data and other information supplied by or on behalf of the Client will be accepted by the Company at the Client's risk. The Company will exert reasonable efforts to ensure their safety and security in a manner consistent with the Company's safety and security policy for its own property.

The Client shall inform the Company in writing prior to supply of such items to the Company of any special or hazardous features associated with such items. The Client shall indemnify the Company at all times against any costs, claims, demands and expenses (including without limitation legal expenses on an indemnity basis) arising from the Client's failure to comply with the provisions of Clause 7.2

7.3 The Client acknowledges and accepts that the contract price does not contain a premium sufficient to cover the Company's risk of unlimited liability in respect of the project and that a limitation on the Company's liability is therefore reasonable. Without prejudice to Clauses 7.4 and 7.5 the Company shall be liable to the Client for such direct losses of the Client as are attributable directly to the Company's defective work, limited to an amount equivalent to ten times the cost of service (Clause 9) up to a maximum of £2,000,000 subject to other limits specifically agreed in writing. The Company shall have no further liability to the Client, its servants or agents in connection with the performance of services or supply of goods, by the Company under this agreement.

7.4 The Company shall have no liability to the Client under contract or otherwise (including negligence or breach of statutory duty) for any consequential or indirect loss or damages. The term consequential shall include, but is not limited to, loss or reduction in profits, increased costs of production or increased costs of Site investigation or development arising from defective work by the Company or incorrect interpretation of Client's data.

7.5 Nothing in this agreement shall restrict the Company's liability for death or personal injury caused by negligence.

7.6 The Company can accept no responsibility for the failure of the Client to follow the Company's advice. The Client is therefore advised to refer back to the Company any Proposal by the Client that would conflict with the Company's advice. The Company will provide advice on the Clients proposals, at standard rates or for an agreed sum.

## **8. Confidentiality and Intellectual Property**

8.1 Except as provided by Clauses 8.4 and 8.5 herein, all material resulting from the Company's performance of the Project, including documents, calculations, maps, photographs, drawings, computer printouts, notes, analytical reports and any other pertinent data are the property of the Company. Ownership of any such material which is unique to the project together with an irrevocable licence in respect of non-unique material shall be the Client's when the Client completes payments and its other obligations under this Agreement. Provided however that the Company shall have the right to retain copies of said materials for archive purposes. All reports and other materials resulting from the performance by the Company of the Project are intended solely for the Client's use in this Project and are not intended or represented to be suitable for use by the Client or third parties on any other Project: such reuse of said materials by the Client or third parties without written permission or adaptation by the Company for the specific purpose intended shall be at the user's sole risk without liability to the Company and the Client agrees to indemnify and hold harmless the Company from all claims, damages and expenses including without limitation legal fees on an indemnity basis arising from such unauthorised reuse.

8.2 Nothing in this Agreement shall create any obligation on the part of the Company to undertake any responsibilities the Client may have under any laws or regulations which may require the reporting or notification to responsible governmental authorities or other third parties of any discharge or release of Hazardous Substances or of any other environmental condition at the Site. However, the Company expressly retains the right to undertake such reporting or notification where it deems such reporting or notification necessary to ensure the Company's compliance with applicable laws or to prevent harm to health, the environment or to property.

8.3 In the event that samples, drilling residues, equipment or other materials generated or used in the course of the performance of the Project, contain or may contain Hazardous Substances, the Company shall, after completion of testing or other related portions of the Project, return such samples or other contaminated materials to the Client or, on prior written request by the Client, and using documentation signed by the Client as generator, have such samples or other contaminated materials transported to a location selected by the Client for final disposal.

8.4 Copyright is reserved to the Company in the Proposal, and any material in the Results that has not been generated under the Project. No such material shall be copied or published (in whole or in part) or disseminated to any third party without the prior written permission of the Company. 8.5 The copyright in all drawings, documents and other similar material provided by or on behalf of the Client for the use of the Company in connection with the Project shall remain vested in the originator of such material, but the Client shall ensure that the Company is duly authorised to use such material for all purposes related to the Project.

8.6 Notwithstanding the foregoing conditions, the Company reserves the right to use an outline description of the Project in its promotional literature.

## **9. Cost of Service.**

9.1 Work will be carried out and charged on the basis of time spent unless a fixed budget is agreed in writing. Any time charge contained or referred to in the Proposal shall be for guidance only and relates to the relevant charge at the date of the Proposal only. Invoices will be issued using the fee rates and price schedule in force at the time work is carried out, unless otherwise agreed.

9.2 Where utilised, a charge will be made for the use of the Company's in-house computer services in accordance with a schedule of charges in force at the time the work is carried out unless otherwise agreed in writing with the Client.

9.3 An amount of 2.5% of the net fee component may be charged on larger projects to cover the cost of communications.

## **10. Terms of Payment**

10.1 Invoices will be rendered monthly and shall be paid (without deduction or set-off) by the Client within 30 days of the date of submission of the invoice by the Company. Any sums remaining unpaid at the expiry of any such 30 days will bear interest to accrue from day to day at the rate of 2% (two per cent) per month cumulatively on the balance outstanding. Without prejudice to Clause 13, the Company reserves the right to suspend its services hereunder if any invoice is not paid within 60 days of the date of submission by the Company.

10.2 If any item or part of an item of an invoice rendered by the Company is disputed or subject to question, the payment of the remainder of the invoice shall not be withheld on those grounds and the provisions above shall apply to such remainder, and also the disputed or questioned item to the extent that it shall subsequently be agreed or determined to have been due to the Company.

## **11. Foreign Currency Expenses**

Where any expense to be reimbursed by the Client is paid by the Company in a currency other than sterling, it shall be reimbursed in sterling calculated at the official purchase rate of exchange prevailing at the date when the expense was incurred.

## **12. Taxation Provisions**

12.1 The cost of services and expenses incurred will bear a value added tax (VAT) charge at the rate applicable at the date of invoice.

12.2 Non-UK Clients: The Client shall remit all payments free of any taxes, levies or claims or duties arising outside the UK. The Client shall pay in full any taxes, levies or claims due according to the laws of its country or state.

## **13. Termination or Suspension**

13.1 If either party shall become bankrupt, go in to liquidation (other than a voluntary liquidation for the purposes of amalgamation or reorganisation only) have a receiver, administrative receiver or administrator appointed over any part of its business or assets, enter in to a composition with its creditors become insolvent (the Bankrupt Party) the other party shall be entitled forthwith by notice to the Bankrupt Party to terminate or suspend work under the Contract.

13.2 If the Client fails to pay any sum due hereunder within 30 days of the due date, the Company may by notice to the Client suspend and at the same or a later time terminate the Contract.

13.3 If either party (the Defaulting Party) breaches a material term of the Contract which remains unremedied for 60 days after service of written notice on the Defaulting Party by the other party specifying such a breach, or if it appears that the Defaulting Party is in breach of a material provision of any statute statutory instrument or has in connection with this Agreement committed an act of default actionable by the other party at common law, the other party may by notice in writing to the Defaulting Party suspend and at the same or a later time, terminate the Contract.

13.4 The Client may terminate the Contract at anytime on 30 days written notice to the Company.

13.5 If the client terminates the contract under Clauses 13.1 or 13.3 above the Client shall pay to the company only such sums as are due up to the date of the termination. If the Company terminates the Contract under Clauses 13.1, 13.2 or 13.3, or the Client terminates the Contract under Clause 13.4, the Client shall pay to the Company in addition to the foregoing, such sums as

are reasonably expended by the Company in bringing the work under the Contract to an end in a prompt but orderly fashion, plus all commitments of the Company and a cancellation fee of 5 % of the outstanding contract price. Such sums in aggregate are not to exceed the Contract price where fixed.

13.6 If the contract is suspended under Clauses 13.1, 13.2 or 13.3 and the Company is required to perform any additional work in connection with the resumption of services, the Client shall pay the Company in respect of the performance of such additional work in advance.

#### **14. Interpretation**

14.1 These Terms of Business and all documents, arrangements and agreements to which they apply shall be construed and have effect in accordance with the Laws of England.

14.2 "Hazardous Substances" in this Agreement includes PCBs, asbestos, petroleum, crude oil, natural gas, pollutants or contaminants and includes, without limitation, any substances, wastes, sewage effluents, process effluents, materials, pollutants or contaminants identified or defined in or by the Control of Pollution Act 1974 or the Environmental Protection Act 1990, as amended.

14.3 This Agreement contains the entire Agreement and understanding between the parties hereto with respect to the subject matter hereof and replaces all prior agreements and understandings relating to the said subject matter.

#### **15. For Contracts involving investigative work**

The Client acknowledges and assumes the risk that (a) Site conditions may change over time; (b) subsurface conditions of the Site may vary from those encountered in borings, surveys or explorations; (c) although necessary to perform the Project, commonly used exploration methods e.g. drilling, borings or technical excavating involve an inherent risk of contamination of previously uncontaminated soils and waters.

#### **16. For contracts involving remedial, construction related activities,**

The Client acknowledges and recognises that (a) during the course of the investigation and or remedial work it may be necessary for the Company or its subcontractors to perform drilling, trenching or other excavation on or in the vicinity of the Site containing Hazardous Substances; (b) the activities to be undertaken by the Company under this Agreement involve certain inherent risks with regard to the potential migration of contaminants present on or beneath the surface of the Site and (c) any seal may be imperfect despite normal precautions. The Client further acknowledges that in the course of performance of this Agreement the company may rely upon information supplied by the Client or the Clients contractors, consultants or agents or information available from generally accepted reputable sources without independent verification. The Client assumes these risks and the Company shall be indemnified pursuant to the following paragraph.

The Client shall save, defend, indemnify and hold harmless the Company and its Directors, officers, shareholders and subcontractors from and against any and all suits, actions, legal or administrative proceedings, claims, demands, fines, losses, costs, liabilities, interest and legal fees which either exceeds the limitation of the liability provided for in Clause 7 of the Agreement or results from, arises out of or are in any way connected with (a) breach of any obligation of the Client under this Agreement; (b) negligent acts or omissions of the Client, the Clients employees, agents and subcontractors; (c) existing conditions or any aggravation of existing Site conditions not solely caused by negligent acts of the Company; (d) any generation, treatment, disposal or transportation of Hazardous Substances; (e) any interpretation, materials furnished or services provided by the Client or a third party in connection with the Project; (f) claims made by any person

not a party to the Agreement relating to the services performed in compliance with the Agreement or (g) arising out of or in connection with any actual or threatened release, discharge dispersal or escape or exposure or threatened exposure of any person or property to a Hazardous Substance; any obligation to test for, study, monitor, report, clean up, remove, abate, contain treat, neutralise or characterise the quality or quantity of any substance, material, vapour including without limitation any hazardous Substance or otherwise pertaining to activities undertaken by the Company under this Agreement.

**Responsible Personnel:**

*A Czarnecki*

**A CZARNECKI (Managing Director)**

EARTH ENVIRONMENTAL & GEOTECHNICAL LTD

Website: [www.earthenvironmental.co.uk](http://www.earthenvironmental.co.uk)

Email: [info@earthenvironmental.co.uk](mailto:info@earthenvironmental.co.uk)

Tel: 0161 9756088

**7th May 2021**