



**DERWENTSIDE ENVIRONMENTAL TESTING SERVICES LIMITED**

**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

**The Employer's attention is particularly drawn to the provisions of clause 9.**

**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 Employer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.8.

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

**Deliverables:** the reports and data produced by the Supplier for the Employer.

**Employer:** the person, firm or body corporate for whose benefit the Services are being carried out by the Supplier, notwithstanding that the instruction to undertake the work may have been received from a consulting engineer architect or other agent acting on his or her behalf.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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.

**Order:** the Employer's order for Services as set out in the Employer's purchase order form, or the Employer's written acceptance of a quotation by the Supplier, as the case may be.

**Permitted Purpose:** the original purpose for which the Services are required, as communicated to the Supplier by the Employer in the Employer's Order.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Employer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by the Employer to the Supplier.

**Supplier Materials:** all materials, equipment, documents and other property of the Supplier

**Supplier:** Derwentside Environmental Testing Services Limited registered in England and Wales with company number 03705645 and whose registered office is at Unit 2, Park Road Industrial Estate, South Consett, County Durham, DH8 5PY.

- 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 letters, faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, following which the Supplier reserves its right to renegotiate or withdraw the offer.
- 2.2 The Order constitutes an offer by the Employer to purchase Services in accordance with these Conditions. This offer is valid for acceptance as a whole and not in part(s) unless specifically and mutually agreed in writing.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order.
- 2.4 If the Employer advises the Supplier in advance that it requires that the Order be made using the Employer's purchase order, it shall be the sole responsibility of the Employer to deliver its purchase order. The absence of the Employer's purchase order shall not prevent the Supplier from issuing acceptance of the Order and/or commencing performance of the Services if it has received written instructions from the Employer to perform the Services in a form other than the Employer's purchase order and the Supplier shall have no obligation to seek delivery of the Employer's purchase order before issuing acceptance of the Order and/or commencing performance of the Services.
- 2.5 Subject to the Supplier obtaining satisfaction that the Employer is capable of discharging its obligations under Clause 5, the Contract shall come into existence

**(Commencement Date)**, on the date of the written acceptance or the date on which the Supplier commences performance of the Services, whichever is earlier.

- 2.6 The Contract and these Conditions constitute the entire agreement between the parties, and these Conditions apply to the Contract to the exclusion of any other terms that the Employer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 The Employer 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.

### **3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Employer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates agreed with the Employer and set out within the quotation or Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Supplier will inform the Employer if it becomes apparent that the work will not be carried out in accordance with any agreed timescales, and will seek to agree new timescales with the Employer.
- 3.3 Unless stated otherwise in the Offer, chemical analysis results will generally be reported within 10 Business Days of receipt of samples for testing, or the testing schedules, whichever is later.
- 3.4 The reporting time for biologically active samples is dependant upon the nature and degree of activity, which must be ascertained in the laboratory prior to analyses. A programme of reporting, which will be dependent on the testing procedures to be adopted, will be agreed between the Employer and the Supplier in advance of the commencement of testing.
- 3.5 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 Employer in any such event.
- 3.6 The Supplier warrants to the Employer that the Services will be provided using reasonable care and skill.

- 3.7 Save as stated in Clause 3.10, any solid samples tested by the Supplier will be stored for a period of 30 days & liquid samples will be stored for a period of 10 days following the issue of a report to the Employer. After this time all samples will be destroyed unless written storage instructions are received. Where samples are stored beyond the relevant period the Supplier will be entitled to invoice the Employer for storage charges at the rate set out in their schedule of rates published from time to time and made available upon request. Payment for storage charges in full, without discount or retention is required within 30 days of the date of invoice.
- 3.8 Where sample collection is provided free of charge the Employer will ensure that reasonable notice of requirement and that arrangements are such that collection can be made during normal working hours. Same day collection will be available if collection has been requested prior to 11am on a Business Day, otherwise collection will take place on the next following Business Day. The Employer will be liable for the costs of any abortive attempts made to collect samples.
- 3.9 The Employer shall have sole responsibility for the safe delivery (whether transported by the Employer, the Supplier or a third party) of samples to the laboratory including, but not limited to, responsibility for packing samples so as to preserve their integrity in transit. The Supplier shall have no liability for any losses, including but not limited to loss of time or financial loss, arising from loss or damage to samples in transit.
- 3.10 Where samples are classified as hazardous waste as defined in regulation 6(a) of the Hazardous Waste (England & Wales) Regulations 2005 then on completion of the testing and storage period the same are to be collected at no cost by the Employer. Alternatively the Supplier will arrange disposal to a licensed site and recharge the costs of administration, haulage and disposal at cost plus 20%, which shall be notified in writing to the Customer in advance of such disposal.

#### **4. EMPLOYER'S OBLIGATIONS**

- 4.1 The Employer shall:
- (a) ensure that the terms of the Order are and any information it provides in the Specification is complete and accurate, and, in particular, must provide the Supplier with a schedule detailing the analyses required prior to the commencement of any testing programme and the placing of an Order;
  - (b) ensure the terms or their Order are complete and accurate;
  - (c) where testing is requested the Employer will provide adequate and suitable samples for the testing required, in a form and container approved by the Supplier. Where such containers are provided by the Supplier there will be a charge for non-return of unused containers of £5 per container. The Supplier shall have no liability for any inability to complete testing due to inadequate samples being provided by the Employer. Unless otherwise agreed in advance the Supplier will only receive samples between 8:30am and 4:00 pm, Monday to Friday excluding bank holidays;

- (d) inform the Supplier in advance of their intended delivery of any samples that are known or suspected to contain material potentially hazardous to health, such as radioactive, biologically active, poisonous or polluted or samples containing asbestos or other toxic chemicals. A risk assessment form is to accompany the samples;
- (e) co-operate with the Supplier in all matters relating to the Services; and
- (f) 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.

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 Employer or failure by the Employer to perform any relevant obligation (**Employer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Employer remedies the Employer Default, and to rely on the Employer Default to relieve it from the performance of any of its obligations to the extent the Employer 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 Employer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations in connection with or arising out of the Employer Default; and
- (c) the Employer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Employer Default.

## 5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be calculated in accordance with the price list detailing the Suppliers current charges which will be provided to the Employer with any quotation prior to any Order.
- 5.2 The Supplier shall maintain records of all time spent by its personnel in performing the Services. Upon the Employer's written request, the Supplier shall allow the Employer (or its representative) to inspect the records referred to above and provide such copies as the Employer requests.
- 5.3 A minimum charge of £100 shall apply for any laboratory testing contract;
- 5.4 Any time / costs estimates are given for guidance purposes only, and are based on assumed provisional quantities. Final charges will depend on the actual work undertaken, and prior notification will be given to the Employer of any proposed increase.

5.5 The Supplier shall issue interim invoices to the Employer on a monthly basis, valued on a time and materials basis, measured against the unit rates included in the quotation.

5.6 The Employer 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

and time for payment shall be of the essence of the Contract.

The Supplier may, by express written notice to the Employer, offer payment terms over and above the 30 days referred to above. Such extended credit shall be at the sole discretion of the Employer and the Employer reserves the right to revoke such period of extended credit at any time and at their sole discretion.

5.7 In no circumstances may the Employer request or the Supplier be required to issue a credit note after the 30 days referred to in Clause 5.6(a).

5.8 All amounts payable by the Employer 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 Employer, the Employer 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 Employer 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 in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

5.10 The Employer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Employer 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 Employer against any amount payable by the Supplier to the Employer.

## **6. USE OF REPORTS AND DATA**

6.1 Unless otherwise agreed, on completion of the Services the Supplier will issue a report to be used for internal purposes only, and as required for the Employer's normal day to day business activities.

6.2 Unless otherwise agreed in writing, any such reports shall not be reproduced or distributed for any other purpose, and the Employer must notify the Supplier if it is

anticipated that any reports or data will be used in any public enquiry, legal or any other similar proceedings. In such circumstances the performance of the Services will be subject to the approval of the Supplier's legal representatives, and the Supplier reserves the right to impose additional terms and conditions.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier, and their findings shall not be reproduced, published or adapted without the Supplier's consent.
- 7.2 Any documentation or data created by the Supplier may be used by the Employer for the Permitted Purpose only.
- 7.3 All Supplier Materials are the exclusive property of the Supplier and may be used for the Permitted Purposes only. The Supplier will have no liability for use of the Supplier Materials for any purpose other than the Permitted Purpose.

## **8. CONFIDENTIALITY**

- 8.1 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 8 shall survive termination of the Contract.
- 8.2 Reports and all other records provided by the Supplier are confidential, and they may not be used or relied upon by any other party.

## **9. LIMITATION OF LIABILITY**

- 9.1 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; or
  - (b) fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Employer or any other party, 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;

- (b) the Supplier's total liability to the Employer 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 the invoice value of the batch of analyses in connection with which the liability arose.

9.3 Testing and / or analyses only reports refer only to the actual samples on which testing has been performed. No report shall be read as implying that any sample or mass from which the sample was drawn is fit for any intended purpose unless explicitly stated in writing by the Supplier.

9.4 The Supplier accepts no responsibility for losses incurred by the Employer or any third parties who makes use of or relies upon any reports, data or other information provided to the Employer otherwise than in the context of the Permitted Purpose, except to the extent that the Supplier can be shown to have failed to exercise reasonable skill and care in providing such information.

9.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.6 This clause 9 shall survive termination of the Contract.

## **10. INDEMNITY**

The Employer shall indemnify the Supplier and any sub-contractors appointed by the Supplier against any claim whatsoever brought by a third party, arising out of the use of all analytical reports or information provided to the Employer as a result of the Services, save to the extent that any such claim arises as a result of the Supplier's failure to exercise reasonable skill and care in performing the Services.

## **11. TERMINATION**

11.1 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, whether by way or compensation or otherwise) fails to remedy that breach within 14 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 14 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 11.1(b) to clause 11.1(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
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Employer if the Employer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 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 Employer and the Supplier if the Employer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(l), or the Supplier reasonably believes that the Employer is about to become subject to any of them, or if the Employer fails to pay any amount due under this Contract on the due date for payment.

## 12. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Employer 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 Employer immediately on receipt;
- (b) the Employer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Employer fails to do so, then the Supplier may enter the Employer's premises and take possession of them. Until they have been returned, the Employer shall be solely responsible for their safe keeping and will not use them for any purpose;
- (c) without prior consent, neither the Employer nor any associated companies will offer employment to any of the Supplier's employees during the term of the Contract, or for a period of six months following termination;
- (d) 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
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 13. GENERAL

13.1 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 Employer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.2 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; and
- (b) the Employer shall not, without the prior written consent of the Supplier (such consent to be provided at the absolute discretion of the Employer), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (c) The Employer shall not, without the prior written consent of the Supplier, assign the benefit of the Contract to a third party (with such consent to be provided at the absolute discretion of the Employer).

13.3 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 10.00 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 13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.8 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.

13.9 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.