

## JMS Engineers Consulting Group Ltd and its Subsidiary Companies Standard Terms and Conditions

### 1. Interpretation

- 1.1. In these conditions, the following definitions apply:
- "Additional Cost"** such further costs and charges that may be incurred by the Supplier in supplying the Services and which shall be paid by the Customer in accordance with clause 5 of these terms.
- "Business Day"** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- "CDM Regulations"** the Construction, Design and Management Regulations 2015, as amended from time to time.
- "Charges"** the charges payable by the Customer for the supply of the services in accordance with clause 5.
- "Commencement Date"** has the meaning set out in clause 2.2.
- "Conditions"** these terms and conditions as amended from time to time in accordance with clause 11.8.
- "Contract"** the contract between the Supplier and the Customer for the supply of the Services in accordance with these Conditions
- "Customer"** the person or firm who purchases Services from the Supplier.
- "Deliverables"** the deliverables set out in the Quotation or Specification produced by the Supplier for the Customer.
- "Intellectual Property Rights"** all patents, rights to inventions, utility models, copyright and related rights, trademarks, trade, business and domain names, rights in goodwill or sue for passing off, unfair competition rights, rights in designs, 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 renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- "Order"** the request for the Services from the Supplier by the Customer.
- "Quotation"** the quotation provided by the Supplier to the Customer including details of services provided, specification, time and cost estimates.
- "Services"** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Quotation or Specification.
- "Specification"** the description or specification of the Services.
- "Supplier"** JMS Engineers Consulting Group Ltd registered in England and Wales with company number 9119667 and its subsidiary and associated companies.

- 1.2. In these conditions the following rules apply:
- 1.2.1. a person includes a natural person or unincorporated or corporate body (whether or not having separate legal status);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

### 2. Basis of contract

- 2.1. The Order constitutes an offer to the Customer to purchase the Services from the Supplier in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, 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 any other contract between the Supplier and the Customer for the supply of the Services.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of ninety days from its date of issue.
- 2.6. Where the Customer engages the services of the Supplier on a subsequent order which is a direct result of this Order ("Linked Orders") then such subsequent order(s) are deemed to compromise part of this Order for the purposes of these terms and conditions and the Quotation.

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### 3. Supply of Services

- 3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### 4. Customer's Obligations

- 4.1. The Customer shall:
  - 4.1.1. ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - 4.1.2. co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3. provide the Supplier's employees and subcontractors, with site access, office accommodation and other facilities as reasonably required by the Supplier for the provision of the Services;
  - 4.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and any information required under safety legislation.
  - 4.1.5. other obligations as may be specified in the Order or Quotation.
- 4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
  - 4.2.1. the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 4.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising from the Supplier's failure to perform any obligations as set out in this clause 4.2; and
  - 4.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or

incurred by the Supplier arising directly or indirectly from the Customer Default

### 5. Charges and payment

- 5.1. The Charges for the Services shall as set out in the Order subject to any re-measurement of fees that the Supplier shall be entitled to reasonably apply having regard to the Services actually provided by it.
- 5.2. The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the Supplier in connection with the Services. including, but not limited to, travelling, hotel and subsistence expenses and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3. The Supplier reserves the right to increase its rates, provided that such charges cannot be increased more than once in any twelve-month period. The Supplier will give the Customer written notice of any such increase three months before the proposed date of the increase.
- 5.4. The Customer shall pay any Additional Costs that arise in the Supplier providing the Services these include, but are not limited to, provision of traffic control, lighting, security or other protection of the Site.
- 5.5. Where appropriate, the Supplier will invoice the Customer with interim invoices as work progresses.
- 5.6. The Customer shall pay each invoice submitted by the Supplier:
  - 5.6.1. within 15 days of the date of the invoice
  - 5.6.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - 5.6.3. time for payment shall be of the essence of the Contract.
- 5.7. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall have the right to charge interest on overdue amount at the rate of 4% per cent per annum above the current base lending rate of HSBC Bank accruing on a daily basis from the due date for payment until date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.8. If the Customer fails to make full payment due to the Supplier under the Contract by the due date for payment, the Supplier reserves the right to suspend the Supply of Services.
- 5.9. If the Customer fails to make full payment due to the Supplier under the contract by the due date for the payment, the supplier retains full Intellectual Property Rights of any Deliverables until payment is made in full.
- 5.10. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding and the Customer shall not be entitled to assert any credit or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in

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part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer. There shall be no main contractor discount or deduction.

- 5.11. For the avoidance of doubt, the Supplier does not participate in the Construction Industry Scheme with HM Revenue & Customs and accordingly no deduction, withholding or set-off shall be made by the Customer in relation to this. The Supplier is also not a member of the Construction Industry Council and Industry Training Board (CITB) and no deductions, setoff or withholding will be made by the Customer in relation to CITB.
- 5.12. Any Quotation and/or Order are on the basis of there being no reduction made on a retention basis.

## 6. Intellectual property rights

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2. In respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

## 7. Confidentiality

- 7.1. A Receiving Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the Disclosing Party. The Receiving Party shall restrict disclosure of such information to its employees, agents or subcontractors as need to know for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

## 8. Limitation of liability

- 8.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 8.1.2. fraud or fraudulent misrepresentation; or
- 8.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)
- 8.2. Subject to clause 8.1 and without affecting clause 8.4:
- 8.2.1. the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory

duty, or otherwise, for any loss of profit, or for any loss arising under or in connection with the Contract; and

- 8.2.2. the Supplier's liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed an amount being ten times the total Charges actually paid by the Customer under the Contract, subject to a minimum of £250,000 in the aggregate.
- 8.3. 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.
- 8.4. Subject to the overall limit in clause 8.2, the Supplier's liability to the Customer under the Contract shall be further limited to the proportion of the Customer's loss and damage that it would be just and equitable to require the Supplier to pay, having regard to the extent of the Supplier's responsibility for that loss and damage, on the assumptions that all other consultants, contractors, subcontractors, project managers or advisers engaged in connection with the project to which the Services relate have:
- 8.4.1. entered into an agreement with the Customer containing a term no less onerous than clause 3;
- 8.4.2. no exclusions of or limitations of liability nor joint insurance or coinsurance in place between them and the Customer and any other party who is responsible to any extent for the loss and damage is contractually liable to the Customer for such loss and damage; and
- 8.4.3. paid to the Customer the proportion of the Customer's loss and damage that it would be just and equitable to require them to pay, having regard to the extent responsibility for that loss.
- 8.5. This clause 8 shall survive termination of the Contract.

## 9. Termination

- 9.1. 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:
- 9.1.1. the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of that party being notified in writing;
- 9.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts 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

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Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or having no reasonable prospect of so doing, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has a partner to whom any of the foregoing apply;

- 9.1.3. the other party commences negotiations with any creditors with a view to rescheduling any debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 9.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, in connection with winding up of the other party;
  - 9.1.5. the other party is the subject of a bankruptcy petition or order;
  - 9.1.6. a creditor of the other party takes possession of, or a distress, execution, sequestration or other 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 fourteen days;
  - 9.1.7. 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 (being a company);
  - 9.1.8. 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;
  - 9.1.9. a person becomes entitled to appoint a receiver or a receiver is appointed over the assets of the other party
  - 9.1.10. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 9.1.11. the other party (being an individual) dies or, by reason of illness or incapacity is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date.
  - 9.3. Without limiting its other rights, each party shall have the right to terminate the Contract by giving the other party three months' written notice.
  - 9.4. Without limiting its other rights, the Supplier shall have the right to suspend provision of the Services under the Contract if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.11, or the Supplier reasonably believes that the Customer is about to become subject to them, or fails to pay any amount due under this Contract on the due date.

## 10. Consequences of termination

- 10.1. On termination of the Contract for any reason:
  - 10.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 10.1.2. the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 10.1.3. the accrued rights, 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; and
  - 10.1.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. General

- 11.1. Force majeure:
  - 11.1.1. For the purposes of this Contract, Force Majeure means an event beyond the reasonable control of the Supplier including but not limited to strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with law or governmental order, regulation, accident, breakdown of plant or machinery, fire, flood, storm, inclement weather (including but not limited to snow, ice, wind or storms causing flooding or the risk of flooding), or default of suppliers or subcontractors.
  - 11.1.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  - 11.1.3. If Force Majeure prevents the Supplier from providing any of the Services for more than twenty four weeks, the Supplier shall, without limiting other rights, have the right to terminate the Contract immediately, giving written notice to the Customer.
- 11.2. Assignment and subcontracting:
  - 11.2.1. 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

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all of its obligations under the Contract to any third party or agent.

11.2.2. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in other manner with any of its rights or obligations under the Contract

11.3. Notices:

11.3.1. 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 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 such address as the other party may have notified the other from time to time or sent by fax to the other party's main fax number or sent by e-mail to such e-mail address as the other party may have notified the other from time to time.

11.3.2. This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action.

11.4. Waiver: 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.

11.5. Severance: 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.

11.6. 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. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7. Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it. For the avoidance of doubt all work carried out by the Supplier for the Customer (including all reports given in connection with the Services) are for the benefit of the Customer only.

11.8. Variation: 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 a Director of the Supplier.

11.9. 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.

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