

Cargate Engineering Ltd

Terms and Conditions

1. Definitions and interpretation

1.1 The following terms shall have the following meanings for the purposes of this agreement:

1.1.1 'Services' mean those specified in the Contractors Quotation or other documentation, subject to amendment.

1.1.2 'Contractor' means Cargate Engineering Ltd.

1.1.3 'Employer' means the person, firm or Company for whom works are carried out.

1.1.4 'Engineer' mean the person agreed by the Contractor and Employer or, failing agreement, nominated by the Contractor.

1.2 Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to by any indication of the meaning of the clauses to which they relate.

1.3 All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

1.4 Acceptance of these terms and conditions is deemed when the Contractor makes an offer which is unconditionally accepted by the Employer. Acceptance may be issued in writing, given orally or may be deemed to have taken place because of the conduct of the Employer in receipt of the offer.

2. Appointment

The Employer appoints the Contractor to undertake the Services in return for the payments.

3. The Contractors obligations

3.1 Not to delegate any duties or obligations arising under this agreement otherwise than may be expressly permitted under its terms.

3.2 To comply with the terms of any notice specifying a breach of the provisions of this agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require the Employer to serve notice of any breach before taking action in respect of it.

4. The Employers obligations

4.1 In consideration of the services to be supplied by the Contractor under this agreement the Employer agrees to make the payments promptly without demand deduction or set off.

4.2 Unless otherwise agreed, payment of the prices and VAT shall be due within 30 days of the date of invoice. Time for payment shall be of the essence. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% above the Bank of England Base Rate from time to time in force and shall accrue at such a rate after as well as before any judgment. In the event that the Employer is acting in the course of a business, the Contractor reserves the right to claim compensation for late payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

4.3 The Employer shall make available to the Contractor the whole of the site of the proposed works at the commencement on site unless otherwise agreed in writing.

5. Cancellation

Prior to commencement of the works on site the Employer may cancel this agreement at any time by giving the Contractor one week's written notice and shall then be liable to pay to the Contractor for all work undertaken and expenses incurred in preparing for the works including special orders/materials which cannot be cancelled. Upon commencement of the works onsite the Employer may not cancel this agreement, save as set out in clause 8.

6. VAT

6.1 All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.

6.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

7. Credit Agreements

7.1 All first order's will be carried out on a pro-forma invoice basis.

7.2 All credit accounts are subject to a maximum limit imposed on them which will be defined by the Employers credit rating. In the event the Employer's agreed credit limit is reached before the specified payment date, an intermediate payment will be required by the Employer to reduce the account balance before further orders are able to be processed.

7.3 The Contractor reserves the right to monitor the Employer's credit rating with any changes influencing or limiting the amount of credit available to the Employer including termination of the Employers credit account facilities at any time at the Contractors discretion.

8. Liability and Liquidated damages

8.1 The Contractor shall not be liable to the Employer for loss or damage to the Employer unless due to the negligence of the Contractor.

8.2 In the event that the Contractor is held to be in breach of its obligations under this agreement, due to negligence, the parties agree that the Contractor shall pay to the Employer as and by way of agreed liquidated damages an amount equal to the price of the services provided by the Contractor up to the date of breach.

8.3 In the event that the Employer disputes the work undertaken by the Contractor, all disputes must be notified to the Contractor within 14 days of the work being carried, or within 14 days of the invoice, whichever is the later. The Employer shall be prohibited from disputing the works undertaken or the amount of the invoice after this 14-day period, save where the Employer is dealing as a consumer.

8.4 All parts/materials supplied by the Contractor remain the property of Contractor until paid in full by the Employer.

8.5 Save as expressly referred to above, and except where the Employer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12 as amended and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods and/ or Services, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

8.6 For the sake of clarity, the Contractor will not be held liable for any consequential losses suffered by the Employer as a result of any breach or the Contractors obligations, whether reasonably foreseeable or otherwise.

8.7 The Employer shall indemnify defend and hold harmless the Contractor in full against all loss, costs damages, charges, expenses and other liabilities awarded against or incurred as a result of or in connection with any claim made against the Contractor by a third party in respect of any matter caused by the Employer or for which liability has been assumed by the Employer.

9. Termination for breach

The following obligations are conditions of this agreement and any breach of them shall be deemed a fundamental breach which shall determine this agreement immediately and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

9.1 Failure on the part of the Employer to make punctual payment of all sums due to the Contractor under the terms of this agreement.

9.2 Failure on the part of the Contractor to observe any obligation under this agreement not requiring Notice to be served and in the case of obligations requiring Notice to be served failure to comply with the terms of any Notice;

9.3 The levying of any distress or execution against the Employer or the making by him of any composition or arrangement with creditors or being a company the Client's liquidation (other than a members' voluntary liquidation with the written consent of the Client);

10. Termination consequences

In the event of this agreement being determined whether by effluxion or time Notice breach or otherwise:

10.1 The Employer shall immediately pay to the Contractor.

10.1.1 All arrears of Payments and any other sums due under the terms of this agreement, and



10.1.2 All further sums which would but for the determination of this agreement have fallen due at the end of the works.

10.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this agreement and the determination of this agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this agreement notwithstanding that the other may have exercised one of more of the rights and remedies against it; and

10.3 Any right or remedy to which either party is or may become entitled under this agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

11. The Works

11.1 The works, unless otherwise notified, have been priced to be carried out between the hours of 07:00am – 17:00pm (Monday – Friday excluding Bank Holidays) unless agreed prior to the commencement and allowed for in the Contractor's quotation. In the event that the Employer changes the hours within the works are to be undertaken, the Employer shall be liable for the Contractor's additional costs.

11.2 In the event that working time is lost on site due to delays caused either by the actions of the Employer, his representative or by other Contractor's employed by the Employer, or by Sewer surcharge caused by storm, flood, tidal or pump failure, the Employer shall be liable for the additional costs incurred by the Contractor. In addition, in the event that the Contractor experiences delays for which they are not responsible for, the Employer shall be liable for the Contractor's additional costs in relation to the additional setting up or out of sequence working.

11.3 Unless otherwise stated in writing it is assumed that there is unrestricted and suitable vehicular access onsite and access is possible to all manholes/assets/sewers/plant including controls, power isolation points and any associated equipment that work is being undertaken on including the clearance of shrubs, overgrowth, overhanging tree's, decking, and any other obstruction restricting access to required working areas/plant. In the event that this is not possible the Employer shall be liable for any additional costs incurred due to lack of access including revisits once suitable access is provided.

11.4 To perform the agreed Services onsite the Contractor may require access to driveways or restricted sites or properties. By permitting the Contractor access, the Employer shall be liable for any subsidence or damage to driveways, sites or properties including paths, roads, fences, trees and garden areas caused by the weight, width and height of the Contractor's vehicles. If the Employer is concerned about the effect of the Contractor's vehicle accessing the Employer's driveways or restricted sites or properties, the Employer should notify the Contractor in advance so that the Contractor may seek ways of limiting such effects.

11.5 If access is required onto private land, designated areas or restricted parking areas, it will be the Employer's responsibility to ensure all relevant permissions and licenses have been obtained.

11.6 Unless otherwise stated in writing it is assumed that there is no requirement for Traffic Management. If Traffic Management is found to be required, the Employer will be responsible for the additional costs incurred by the Contractor.

11.7 In the event that the Contractor is required to work in any confined spaces as defined by the Health and Safety at Work Act the Contractor reserves the right to charge the Employer for the required additional safety equipment and persons.

11.8 Unless otherwise stated in writing it is assumed that there is no requirement for London working. If London working is found to be necessary, the Employer will be responsible for the additional costs incurred to the Contractor for Direct Vision Standard (DVS), Congestion Charge (CC), Dartford Bridge, Blackwall and Silvertown tunnel, ULEZ and LEZ.

12. Specific Works (to be read in conjunction with the above conditions)

12.1 Cleaning

Removal of silt/debris in excess of 10%, or which requires additional equipment for the removal of fat deposits, grout, encrustation, concrete, builders' rubble or roots will be charged additionally unless otherwise stated in writing.

12.1.2 Cleaning works which require specialist cutters and chain flails is carried out on an attempt only basis and the Contractor will not guarantee complete removal of any obstructions. Due to the performance of the cutters and chain flails, the Contractor will not be responsible for any damage caused to the existing drain line or pipe work.

12.2 Sewer Condition

Where information is provided or implied either verbally or in writing or through CCTV recordings concerning the condition of the sewers and this is found to be inaccurate or out of date the Employer shall be responsible for any extra costs incurred for additional work that may be required to complete the works. The Contractor shall not be liable for any deterioration, structural or otherwise, that develops or becomes apparent on any pipe they are working on howsoever caused.

12.3 CCTV/Sonar Inspection works

Due to the nature of CCTV inspection, the Contractor cannot guarantee the accuracy of any CCTV inspection or measurement. A CCTV survey will only show the interior of the sewer or pipe and will not show the exterior. Alternatively, Sonar may be used to track the route of a pipe, however, Sonar by its nature may be up to 1 metre out of accuracy. Any interpretation or advice as a result of CCTV inspection shall not be binding on the Contractor and is the sole responsibility of the Employer. In the event that the measurements or advice given is inaccurate, the Contractor shall not be responsible for any loss or damage howsoever caused.

12.4 Waste Disposal

Unless otherwise stated the Contractor has not quoted for the removal of waste or debris from site. If disposal is found to be necessary or if the waste is found to be different to the description of waste/EWC code included within the quotation, the Employer will be responsible for the additional costs incurred by the Contractor in the removal, storage, transportation, and disposal of waste to a registered site together with additional administrative costs. If the waste removed and transported from the Employer is rejected by the registered tipping facility, the Employer must accept the waste back to their premises or agree to move the rejected waste to a new consignee and will be responsible for any additional costs incurred by the Contractor.

12.5 UV Structural Patching and Re-Lining

Due to the nature of relining there can be no delays once the linings have been impregnated. In the event that there are delays beyond the Contractor's control any linings impregnated may have to be discarded and new linings provided. Further the Employer warrants that the sewers or pipes are in an acceptable condition to receive the liner and will be free of live water prior to the works being undertaken by the Contractor. In the event that the sewers or pipes are not in an acceptable condition to receive the liner and/or live water is present, the linings used by the Contractor will not function. The Employer will be liable for the additional costs incurred should new linings be required in any event.

12.5.1 Unless otherwise stated in writing it is assumed that there is no requirement for lateral cuts. If lateral cuts are found to be necessary, the Employer will be responsible for the additional costs incurred by the Contractor.

12.6 Installations & Excavations

The Contractor will install the plant in the location agreed with the Employer. If the Employer wishes to alter the location of the plant or other equipment after or during installation, the Employer will be responsible for any additional costs incurred by the Contractor in connection making such alterations.

12.6.1 The Employer must clearly mark and notify the Employer of all pipes and cables running underground near to where the plant is to be installed. The Contractor will not be responsible for damage to any pipes or cables that have not been clearly marked and notified.

12.6.2 The Employer will be responsible for organising and all costs associated with Environment Agency approval, planning permission, LABC Building Control, Highway Licenses and Traffic Management unless agreed otherwise in writing by The Contractor.

12.6.3 Unless otherwise stated in writing it is assumed that installation and excavation area is safe, sound and un-contaminated ground conditions that do not require support or dewatering.

12.7 Maintenance Services

Where the Contractor provides maintenance services to the Employer, the Contractor may replace parts with a value of up to £100.00 + VAT onsite without the Employers prior consent, where the Contractor deems this necessary to ensure operation and reliability of the unit and to reduce the need for return visits.

13 Damage or Loss of Equipment

If damage or loss is sustained to the Contractors equipment due to reasons beyond their control, or due to the condition of the pipe work or some other known or unknown risk, the Contractor reserves the right to charge for the costs in retrieving the Equipment, including the instruction or another Contractor and/or the costs of replacing the Equipment. The Contractor also reserves the right to charge for loss or profits or down time whilst the items are recovered or replaced.

14. Quotation Validity & Market Fluctuations

Quotations are valid for 21 days from the date of issue. Whilst every effort is made to ensure that the prices provided are accurate, due to the continued volatility of the market and potential fluctuations in fuel, disposal, material, labour and other associated costs, we reserve the right to amend our prices where the quotation is accepted after the 21-day validity period.

15. Miscellaneous

15.1 Warranty

Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

15.2 Unless otherwise stated in writing standard company warranties apply – 12 months parts and labour.

15.3 Force majeure

In the event of national emergency, war, prohibitive governmental regulation or any other cause beyond the control of the parties ('force majeure event') the obligations of the parties shall be suspended for so long as the force majeure event renders performance of the agreement impossible and upon the occurrence of a force majeure event all money then due to the Contractor shall be paid immediately.

15.4 Severance

If any provision of this agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority remaining provisions of this agreement shall remain in full force and effect unless the Contractor in the Contractors discretion decides that the effect of such declaration is to defeat the original intention

15.5 Whole agreement

Each party acknowledges that this agreement contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

15.6 Notices

All notices to be given under this agreement shall be in writing and shall either be delivered personally or sent by first class or airmail prepaid post or by email, telex, cable or facsimile transmission and shall be deemed duly served:

- In the case of a notice delivered personally, at the time of delivery;
- In the case of a notice sent inland by first class prepaid post, 2 clear business days after the date of dispatch;
- In the case of an email telex, cable or facsimile transmission, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following business day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next business day.

Each notice shall be addressed to the address of the party concerned set out in this agreement or to such other address as that party shall have previously notified to the sender.

15.7 Proper law and jurisdiction

This agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

15.8 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

15.9 Third party rights

A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

