

# Terms and Conditions



## I. Interpretation

1.1 In these Conditions:

**'Client'** means the company, individual or entity who accepts a quotation of the Company for the provision of the Services or whose order for the Services is accepted by the Company;

**'Company'** means ASBESTOS CONSULTANTS EUROPE LIMITED (registered in England & Wales under number 06464301) a wholly owned member of the John F Hunt Group trading as 'ACE Consultants';

**'Conditions'** means the standard terms and conditions of sale set out in this document as amended from time to time in accordance with clause 2.4 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Company;

**'Contract'** means the contract for the provision of the Services in accordance with these Conditions;

**'Output Material'** means data, drawings, plans, documents, test results and other information prepared by the Company solely as part of the Services and for provision to the Client;

**'Services'** means the provision of consultancy, testing, air monitoring, surveying, training, inspection or other services which the Company undertakes to perform for the Client under the Contract;

**'Test Material'** means any materials or other items which are to be tested and/or analysed by the Company as part of the Services.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Any reference to 'and/or' means either or both of the alternatives as the case may be.

1.5 A reference to a party includes its personal representatives, successors or permitted assigns.

## 2. Basis of the sale

2.1 The Company shall provide, and Client shall pay for, the Services in accordance with any written quotation or tender of the Company which is accepted by the Client or any written order of the Client which is accepted by the Company (each being an **'Order'**) subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 All quotations given by the Company are valid for 30 days from the date of the quotation.

2.3 Any Order submitted by the Client shall be deemed to be accepted by the Company only when confirmed in writing by the Company's authorised representative at which point and on which date the Contract shall come into existence.

2.4 No variation to these Conditions shall be binding unless agreed in writing between an authorised representative of the Client and the Company.

2.5 The Contract constitutes the entire agreement between the Client and the Company. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract. For the avoidance of doubt, the Company's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Company in writing.

2.6 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company'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 have any contractual force.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

## 3. Orders and specifications

3.1 The Client shall be responsible to the Company for ensuring the completeness and accuracy of the terms of any Order (including any applicable specification) submitted by the Client, and for giving the Company any necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2 The Client shall provide the Company, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Company.

3.3 The Company reserves the right to make any changes in the specification of the Services which are required to conform with any applicable safety, regulatory or legal requirements.

3.4 No Order which has been accepted by the Company may be cancelled by the Client except with the agreement in writing of the Company and on condition that the Client shall indemnify the Company in full against all loss (including, without limitation, loss of profit), costs (including, without limitation, the cost of all labour and materials used), damages, charges and expenses incurred by the Company as the result of cancellation.

3.5 Dates for performance are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond the Company's reasonable control.

3.6 The Client shall have no right to reject Services and shall have no right to rescind for late performance unless the due date for performance has passed and the Client has served on the Company a written notice requiring the Contract to be performed and giving the Company not less than 14 days in which to do so and the notice has not been complied with.

## 4. Assignment and Sub-Contracting

4.1 The Client shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any manner with any or all of its rights or obligations under the Contract.

4.2 Subject to clauses 4.3 and 4.4 below, the Company may at any time assign, transfer, mortgage, 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.

4.3 The Company may subcontract any of the Services where the Services are testing and inspection services provided that:

(a) it has either obtained the prior consent of the Client (such consent not to be unreasonably withheld or delayed); and

(b) such subcontracting is in accordance with the applicable ISO quality standards.

4.4 When testing or inspection services are subcontracted, all results will be reported clearly displaying the organisations accreditations symbols that completed the works. On some instances this may be included into the Company's reports.

## 5. Remuneration for Services

5.1 The fee for the Services (**'Fee'**) and instalments in which the Fee is to be paid shall be in accordance with the Order.

5.2 The Fee may be varied by the Company by giving notice to the Client at any time before commencement of the Services to increase the Fee to reflect any increase in the cost to the Company of providing the Services which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs

of labour, materials or other costs of manufacture) or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions. The Client may cancel without liability any Contract in relation to which the Fee is to be increased and in relation to which the Services have not been commenced at the increased Fee provided that the notice of cancellation is received by the Company within 14 days of notification of the increase by the Company.

5.3 Value Added Tax (**'VAT'**) will be added to all charges at the rate applicable at the tax point at the time of invoice and shall be payable in addition. Where the Client is registered for VAT within the European Union but outside the United Kingdom the work will be zero-rated provided the Company has been notified of the Client's VAT registration number. If the Client is not VAT registered or the Company has not been so notified, VAT at the rate applicable at the tax point shall become payable.

5.4 The Client shall pay an additional fee calculated at the applicable hourly rates specified in the Order or if no such hourly rate was specified at such rate as is fair and reasonable if the Company undertakes additional Services at the request of the Client or due to any design changes requested by the Client or due to other circumstances beyond the Company's reasonable control.

## 6. Terms of payment

6.1 Subject to any special terms agreed in writing between the Client and the Company, the Company shall be entitled to invoice the Client for the Fee on or at any time after commencement of the Services. Payment is due on delivery of the Company's invoice.

6.2 The Company shall be entitled to invoice each stage of the Services separately.

6.3 The Client shall pay the Company's invoice inclusive of VAT, where applicable, within 14 days after the date of the invoice and this is the final date for payment. The time for payment shall be of the essence of the Contract. Receipts for payment will be issued upon request.

6.4 Payment shall not be deemed to be made until the Company has received either cash or cleared funds in respect of the full amount outstanding.

6.5 The Client shall pay all sums due to the Company under the Contract without any set off, deduction, counterclaim and/or any other withholding of monies.

6.6 If the Client fails to pay the invoice in full by the final date for payment then, without prejudice, to any other right or remedy available to the Company, the Company shall be entitled to:

6.6.1 cancel the Contract or suspend any further provisions of the Services to the Client. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the Services.

6.6.2 charge the Client interest at the higher of the rate under the Late Payment of Commercial Debts (Interest) Act 1998 or 4% per annum above Lloyds Bank plc's base lending rate from time to time. Interest shall be calculated on a monthly basis and a part of a month shall be treated as a full month for this purpose; and

6.6.3 charge the Client the costs of recovery of any outstanding amount including legal costs and disbursements and charge any Bank charges incurred on re-presenting cheques or requesting special clearance thereof.

6.7 The Company may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable to or owing to the Customer.

The Company reserves the right to recovery any outstanding amount including, without limitation, all legal costs and disbursements, the costs and expenses of any debt collection agent and any bank charges incurred by the Company in recovering any unpaid debt and/or the cost of re-presenting cheques or requesting special clearance thereof."

## 7. Credit Limit

7.1 The Company may set a reasonable credit limit for the Client. Changes in the Client's credit limit will be notified to the Client from time to time.

7.2 The Company reserves the right to refuse to accept orders for Services and/or to suspend the performance of the Services if they would result in the Client exceeding its credit limit or the credit limit is already exceeded.

## 8. Force Majeure

8.1 The Company shall have no liability to the Client for any delay in performance of the Contract to the extent that such delay is due to any events outside the Company's reasonable control (**'Force Majeure Event'**) including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, shortage of materials or supplies, extreme weather, epidemic, utility disruption and governmental actions.

8.2 If the Company is affected by a Force Majeure Event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

8.3 If the Force Majeure Event prevents the Company from providing any of the Services for more than 3 days, the Company shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

## 9. Accuracy

9.1 The Client is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Services.

9.2 Any results provided by the Company comprising advice data and conclusions are based on information supplied by the Client and evidence known at the time to the Company.

9.3 The Client shall supply all necessary information, data, drawings and items, and access for the Company and its nominees to such premises, information, facilities, persons and/or other items as the Company may reasonably require, to the timescale required by the Company and shall arrange, at the Client's expense and risk, for the conveyance of all test items to and from the Company's laboratories unless the conveyance of samples and other items forms an integral part of any of the Services.

9.4 All data provided, conclusions reached, or recommendations made by the Company rely on scientific and engineering concepts disciplines and procedures used or adopted by the Company and the Company does not warrant that the same will necessarily be achieved by other parties, or that such conclusions or recommendations will necessarily be valid in circumstances other than those of which the Company has direct experience. Any results are believed to be accurate and reliable subject to the limitations of normal experimental uncertainties. Any results are based on the particular techniques used in the Services. Other techniques may give rise to different results.

9.5 Any report produced by the Company for the benefit of the Client relates solely to the Test Materials reported on and not any bulk/material from which the Test Materials were drawn.

## 10. Property and Risk

10.1 Risk of damage to or loss of Test Materials utilised in the Services shall remain with the Client. The Company will use its reasonable endeavours to safeguard any Test Materials.

10.2 The Client shall retain title and ownership of the Test Materials until they are utilised in the Services or disposed of by the Company.

10.3 The Client shall keep the Test Materials insured for their full replacement value.

10.4 The Client shall inform the Company of the nature of the Test Materials and any hazardous properties of the Test Materials together with any details of special storage requirements for the Test Materials.

10.5 Following examination of the Test Materials any remainder will only be returned to the Client upon written request. Unless the Company agrees with the Client

otherwise the Company shall be entitled to dispose of all remaining Test Materials within 6 months of the completion of the Contract.

## 11. Confidentiality and Intellectual Property

11.1 The property, and any copyright, design rights or other intellectual property rights in any Output Material shall, unless otherwise agreed in writing between the Client and the Company, belong to the Company, but the Client shall be entitled to use the Output Material for the purposes of utilising the Services by way of an exclusive licence, subject to payment in full of all sums payable under the Contract.

11.2 Any information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client; but the foregoing shall not apply to any documents or other materials, data or other information:

- 11.2.1 which either party is required to disclose by law or by statutory requirements; or
- 11.2.2 which are public knowledge at the time when they are so provided by either party; or
- 11.2.3 which become public knowledge through no fault of the other party.

11.3 The Output Material is prepared exclusively for the Client for the purposes of the Contract and may not under any circumstances be used by any third party. The Company is not liable for any Output Material so used. The Client shall indemnify and keep indemnified the Company against all liability and loss, damages and expenses awarded against or incurred by the Company in connection with any claims by third parties in connection with such use of the Output Material.

11.4 While the Company is not aware, to the best of its knowledge, that any Output Material infringes any design rights, copyright or other intellectual property rights of any third party, it does not give any particular warranty in this respect.

## 12. Warranty and Limitation of Liability

12.1 The Company warrants to the Client that it is accredited by UKAS and that the Services as listed in its UKAS schedules will be provided in accordance with the Company's accredited procedure. In providing the Services the Company will adopt the professional standard of care reasonably to be expected of a competent consultant.

12.2 Except as expressly provided in this Contract and so far as is permitted by statute all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise, including without limitation, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

12.3 The Services are provided to and for the benefit of the Client exclusively and all collateral warranties are excluded.

12.4 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

12.5 Subject to clause 12.12 below, the Company shall have no liability to the Client for any:

- 12.5.1 consequential and/or indirect losses;
- 12.5.2 loss of profits and/or damage to goodwill;
- 12.5.3 loss of or corruption of data;
- 12.5.4 special damages; and/or
- 12.5.5 business interruption, loss of business, contracts, opportunity and/or production.

12.6 Subject to clause 12.12 below, the Company's total aggregate liability to the Client in relation to the Contract shall not exceed 250% of the Fee actually received in cleared funds by the Company under the Contract. To the extent that any liability of the Company to the Client would be met by any insurance of the Company then the liability of the Company shall be extended to the extent that such liability is met by such insurance.

12.7 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

- 12.7.1 liability for breach of contract (including fundamental breach);
- 12.7.2 liability in tort (including negligence);
- 12.7.3 liability for breach of statutory duty; and
- 12.7.4 liability for breach of common law.

except clause 12.6 above which shall apply once only in respect of all the said types of liability.

12.8 Nothing in the Contract shall exclude or limit any statutory rights of the Client which may not be excluded or limited due to the Client acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.

12.9 The Client shall indemnify and keep the Company indemnified against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered or incurred by the Company as a result of any claims made against the Company involving the infringement of any intellectual property rights by the Client or the Client's agents.

12.10 The Client shall indemnify and keep indemnified the Company against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including, without limitation, any increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered or incurred by the Company and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Client.

12.11 The Client acknowledges and agrees that the limitations of liability contained in this clause are:

- 12.11.1 fair and reasonable;
- 12.11.2 reflected in the level of charges and of insurance cover carried by the Company;
- 12.11.3 just and equitable having regard to the extent of the responsibility of the Company for any loss or damage suffered, on the basis that all other consultants, contractors and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those contained in this Contract.

12.12 Nothing in these Conditions shall limit or exclude the Company's liability for:

- 12.12.1 death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- 12.12.2 fraud or fraud misrepresentation; or
- 12.12.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.13 This clause 12 shall survive termination of the Contract.

## 13. Publicity

13.1 The Company's name shall not be used in connection with the Contract for purposes of publicity promotion or advertising without the prior written approval of the Company.

13.2 The Company may publish or join in publishing any description or illustration of the works with the prior consent of the Client.

## 14. Non-solicitation of Staff

14.1 The Client shall not, during the period of performance of the Services and for 6 months afterwards, solicit or entice away or seek to entice away from the Company to work for its business, whether as principal, agent, partner, director, employee, seconded or consultant, any person who is or was employed or engaged by the Company in providing the Services at any time during the previous 6 months.

## 15. Data Protection Act 1998

15.1 This clause 15 will only apply if the Client is a living individual (either sole trader, partnership or other equivalent in any other jurisdiction).

15.2 The Company is registered under the Data Protection Act 1998.

15.3 The Company may consult or register information about the Client and the conduct of the Client's account with a licensed credit reference agency. The Company may also consult a licensed credit agency about any credit information held on the Client, or the Client's principal directors. The Company will keep a record of that search either on computer or on manual records.

15.4 As part of its marketing policy the Company may send to the Client from time to time details of its products and services. If the Client does not wish to receive these details then it should contact the Company in writing to inform the Company.

15.5 The Company may transfer information about the Client to its financiers, who:

- 15.5.1 may use, analyse and assess information about the Client, including the nature of the Client's transactions, and exchange such information with any Group Company and others for credit or financial assessment, market research, statistical analysis, insurance claims, underwriting and training purposes and in making payments and servicing their agreement with us;
- 15.5.2 from time to time, may make searches of the Client's record at credit reference agencies where the Client's record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches;
- 15.5.3 may give information about the Client and the Client's indebtedness to the following:

- i) the Company or their insurers for underwriting and claims purposes;
  - ii) any guarantor or indemnifier of the Client's or the Company's obligations to enable them to assess such obligations;
  - iii) the Company's bankers or any advisers acting on their behalf;
  - iv) any business to whom the Client's indebtedness or the Company's arrangements with the Company's financiers may be transferred – to facilitate such transfer;
- 15.5.4 may monitor and/or record any phone calls the Client may have with them, for training and/or security purposes;
- 15.5.5 if they transfer all or any of their rights and obligations under their agreement with the Company to a third party, they may transfer information about the Client to enable the third party to enforce their rights or comply with the obligations.

15.6 The Company will provide the Client with details of its financiers on written request, including a contact telephone number if the Client wishes to have details of the credit reference agencies and other third parties referred to above from whom they obtain and to whom they may give information about the Client. The Client also has the right to receive a copy of personal data they hold about the Client if the Client applies to them in writing. However a fee, as determined by the Company, will be payable.

15.7 Should the Client not wish information to be passed to any Group Company then please notify the Company in writing.

## 16. Events of Default, Termination, Repossession, Suspension

16.1 If:

- 16.1.1 the Client fails to make any payment to the Company when due;
- 16.1.2 the Client breaches the terms of the Contract and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 16.1.3 the Client persistently breaches any one or more terms of the Contract;
- 16.1.4 the Client ceases or threatens to cease to carry on business;
- 16.1.5 the Client is an individual or partnership and the individual or a partner is the subject of a bankruptcy petition; or
- 16.1.6 the Client has a creditor or encumbrancer who 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 the Client's assets and such attachment or process is not discharged within 14 days;
- 16.1.7 the Client suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 16.1.8 the Client 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 agreement with its creditors;
- 16.1.9 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 the Client;
- 16.1.10 the Client is subject to an application that 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 Client (being a company);
- 16.1.11 the holder of a qualifying floating charge over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;

16.1.12 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;

16.1.13 any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1.5 to clause 16.1.13 (inclusive);

16.1.14 the Client's financial position deteriorates to such an extent that in the Company's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

16.1.15 if the Client (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; then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 16.2 below.

16.2 If any of the events set out in clause 16.1 above occurs in relation to the Client then:

- 16.2.1 the Company may withhold the performance of any Services and cease any Services in progress;
- 16.2.2 the Company may cancel, terminate and/or suspend the Contract without liability to the Client; and/or
- 16.2.3 all monies owed by the Client to the Company shall forthwith become due and payable.

16.3 The Company shall have a lien over all property or goods belonging to the Client which may be in the Company's possession in respect of all sums due from the Client to the Company.

16.4 On termination of the Contract for any reason, the accrued rights, remedies, obligations and obligations of the Client and the Company as at the expiry or termination shall be unaffected, including, without limitation, the right to claim damages in respect of any breach of the Contract which existed at or before the termination or expiry, and clauses of the Contract which expressly or by implication survive termination shall continue in full force and effect.

## 17. General

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.

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17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second working day after posting; 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, one business day after transmission.

17.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.4 A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder or the provision in question shall not be affected thereby.

17.6 The parties acknowledge that, except as specifically provided in the Contract, it is not their intention that any third party shall be entitled to enforce any term of the Contract which may confer a benefit on that third party, whether any such entitlement would, but for this clause 17.6, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17.7 Any Group Company may, with the consent of the Company, enforce the Contract as if it were the Company. The rights of any third party to enforce this Agreement may be varied and/or extinguished by agreement between the parties to the Contract without the consent of any such third party.

17.8 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

## 18. Law and Jurisdiction

18.1 The Contract shall be governed by and construed in all respects in accordance with the English Law and the parties agree to submit to the exclusive jurisdiction of the English courts in relation to any dispute under or connected with the Contract.