



LCM Environmental Limited.  
Established 1987

Langlands Business Park  
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Providing nationwide fuel, fuel storage  
and environmental maintenance and  
management services.

## STANDARD TERMS AND CONDITIONS 2018

### 1 INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings, unless the context requires otherwise:

**Commencement Date** means the date of commencement of supply of the Goods and or the Services as set out in the Contract;

**Conditions** mean these terms and conditions as amended from time to time in accordance with clause 18.1;

**Confidential information** means any and all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives in connection with the Contract, concerning: (a) the existence and terms of the Contract; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) any information developed by the parties in the course of carrying out the Contract;

**Contract** means any contract between the Supplier and the Customer for the sale and purchase of Goods and or Services including the order and incorporating these Conditions and formed in accordance with clause 2.2;

**Contract Period** means the period of supply of the Goods and or the Services as set out in the Contract;

**Customer** means the person(s), firm or company who purchases the Goods and or Services from the Supplier;

**Customer Information** means the information that the Company requires the Customer to provide to the Company in relation to the Goods and or the Services and information described in clauses 3.6 and 8.1.3 to 8.1.5 inclusive;

**Dangerous Goods** has the meaning set out in mean European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, as amended from time to time;

**Divisibility** means that this contract is his contract is divisible. The work performed in each period during the currency of the contract shall be invoiced separately. Each invoice for work performed in any period shall be payable by the customer in full in accordance with the terms of payment provided for herein, without reference to and not withstanding any defect or default in the work performed or to be performed in any period.

**Estimate** means any written or verbal estimate or quotation provided to the Customer by the Supplier for the provision of the Goods and or the Services;

**Event of Default** means (a) any breach by the Supplier of its contractual obligations arising under the Contract (other than a breach arising from wilful default or recklessness); (b) any misrepresentation by the Supplier in connection with (whether or not contained in the Contract) the Contract (other than a fraudulent misrepresentation); (c) any tortious, act or omission, including negligence, arising in connection with the Supplier's performance under the Contract (other than any act or omission which is fraudulent or dishonest); and/or (d) any other act giving rise to a liability in respect of the Contract.

**Fuel** means any fuel products to be supplied to the Customer or transferred on behalf of the Customer by the Supplier or its sub-contractors under the terms of the Contract, including (without limitation) gas oil (red diesel), derv (white diesel), kerosene, unleaded petrol, heavy oils, ultra-low Sulphur gas oil and biodiesel;

**Goods and or services** means any Goods and or Services to be supplied to the Customer by the Supplier or its sub-contractors in accordance with the Contract, which may include (without limitation) fuel tank cleaning, fuel tank removal, garage site closure, demolition of buildings, removal and disposal of waste, backfill, fuel, spill response kits and equipment, tanks, and tank equipment such as pumps, gauges, alarms and overflow protection devices;

**Insolvency** shall have the meaning set out in clause 13.3.2;

**Intellectual property rights** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Order** means any order made by the Customer for Goods and or Services from the Supplier;

**Price** means the price payable by the Customer to the Supplier in consideration for the Goods and or Services in accordance with clause 5.1;

**Site** means the Customer's site within the United Kingdom to which the goods are to be delivered and or the services are to be provided (as appropriate) as notified by the Customer to the Supplier in the order.

**Supplier** means LCM Environmental Limited, company number: 2172861, whose registered office is situated at Langlands Business Park, Uffculme, Devon. EX15 3DA and its **subsidiaries** from time to time and **subsidiary** shall have the meaning as set out in Section 736 of the Companies Act 1985 as amended;

**Waste** means any waste (having the same meaning as "Directive Waste" as defined under the Waste Management Licensing Regulations 1994 and or as defined by the Waste Regulations 2004) removed, transported, disposed of or otherwise dealt with by the Supplier or its sub-contractors on behalf of the Customer as part of the services;

**Working day** means a day other than a Saturday, Sunday or public holiday in England when banks in London

are open for business.

- 1.2 In these Conditions, unless a contrary intention appears: the masculine includes the feminine and vice versa;
- 1.3 the singular includes the plural and vice versa;
- 1.4 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument or as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.5 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.6 headings are for ease of reference only and shall not affect the interpretation or construction of these Conditions;
- 1.7 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;
- 1.8 references to clauses are; unless otherwise provided, references to clauses of these Conditions;
- 1.9 references to writing shall include facsimile and email.

## **2 FORMATION OF CONTRACT**

- 2.1 Orders may be placed by the Customer in writing by fax, email or post or verbally in person or by telephone. Each Order shall be deemed to be an offer by the Customer to purchase the Goods and or the Services subject to these Conditions.
- 2.2 No Order shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier or (if earlier) the Supplier commences delivery of the goods and or the provision of the services to the Customer when a contract for the provision of Goods and or Services under these Conditions will come into effect.
- 2.3 Any Estimate provided to the Customer by the Supplier is provided on the basis that it is not an offer capable of acceptance and that no Contract will come into existence until an Order is placed by the Customer and the Supplier accepts such Order in accordance with clause 2.2.
- 2.4 These Conditions are the only basis on which the Supplier is prepared to deal with the Customer and the Contract shall be based on these Conditions to the entire exclusion of all other terms and Conditions which the Customer may purport to apply to the Contract. These Conditions shall apply to all purchases of Goods and or Services by the Customer from the Supplier.
- 2.5 These Conditions shall govern each order made by the Customer and no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract Including by way of reference to any such document.
- 2.6 Labour only services supplied to LCM must have accompanying timesheets (signed by an LCM representative) or hours worked recorded in the site book-failure to comply may result in non-payment.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.8 Any Estimate given is valid only for the period stated in the Estimate or if no period is stated a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

## **3 DESCRIPTION**

- 3.1 The description of the Goods and or Services shall be as set out in the Contract. The Supplier reserves the right to amend the description of the Goods and Services if required by any applicable statutory or regulatory requirements.
- 3.2 Orders shall normally be placed by the Customer on the basis of an estimate provided by the Supplier. Where an order placed on the basis of an estimate is accepted by the Supplier the terms of the relevant estimate (including any description of the Goods and or Services to be provided by the Supplier and the price to be paid for them) shall be incorporated into and form part of these Conditions. In the event of any conflict between the estimate and these Conditions, the terms of these Conditions shall prevail.
- 3.3 Where an order is placed by the Customer In circumstances where no estimate has been provided by the Supplier (for example in circumstances where an emergency response is requested by the Customer, or where the Supplier cannot identify the extent of the services required in advance of carrying them out) the Supplier shall provide such Goods and or Services as it reasonably considers in its sole opinion are necessary to meet the stated aims of the Customer.
- 3.4 The Supplier shall prepare any estimate on the basis of the site as seen or where no site visit has been carried out on the basis of information provided by the Customer. The estimate shall be subject to change by the Supplier once site conditions are confirmed, including (without limitation) where it becomes apparent that the services required to meet the stated aims of the Customer are materially different to those originally envisaged or where the site information provided by the Customer was incomplete or inaccurate.
- 3.5 The Customer acknowledges that the Customer is solely responsible for providing the Customer Information, and that the Supplier shall rely on the Customer Information in determining and selecting the appropriate Goods and Services and preparing the Estimate.
- 3.6 Any Customer Information supplied by the Customer shall include:
  - 3.6.1 any past or present use of the Site which may have an adverse effect on the Services or the Goods;
  - 3.6.2 details of any hazardous materials present at the Site which may have an adverse effect on the Services or the Goods or on the health and safety of the Company's officers, employees and agents;
  - 3.6.3 whether the Site is a listed building, is within a conservation area or is subject to any other restrictions that may restrict or prevent the installation of the Equipment or the services to be performed.
- 3.7 The Customer warrants that the Customer Information and any further information supplied by the Customer to the Supplier under the Contract are complete and accurate in all respects.
- 3.8 The Supplier shall be entitled to rely upon the specification and any advice given by the Customer (in relation to the suitability of the Goods and or Services for meeting the Customer's requirements) such that to the extent that the Goods and Services comply with such specification and or such advice then the Supplier shall be deemed to have supplied in accordance with these Conditions, without limitation, notwithstanding the Customer Information.
- 3.9 Where the Customer requests a change to the Goods and or Services to be supplied pursuant to the Contract the Supplier shall use its reasonable endeavours to conform to such a request, provided always that the Supplier shall be under no obligation to do so, shall have no liability for its failure to do so and shall be entitled to payment of any additional costs incurred as a result of such change to the Goods and or Services.
- 3.10 All samples, technical data, descriptions, illustrations or advertising of the Goods and or Services in any offers, leaflets, catalogues and advertising material, produced by the Supplier are illustrative only and for the sole purpose of giving an approximate idea of the Goods and or Services described in them and are subject to change without notice. They will not form part of the Contract or have any contractual force.

## **4 SUPPLY OF THE GOODS AND OR SERVICES**

- 4.1 Unless otherwise agreed between the parties in writing the supply of the Goods and or Services shall take place at the Site.
- 4.2 Any dates specified by the Supplier for the supply of the Goods and or Services are intended to be an estimate only and time of supply of the Goods and or Services shall not be of the essence for the purposes of the Contract. If no date is specified, the supply of the Goods and or Services will be within a reasonable time.
- 4.3 Subject to the provisions of clause 12 of these Conditions, the Supplier will not be liable for any loss (including loss of profit), costs, damages, charges or expenses of the Customer caused directly or indirectly by any delay in the supply of the Goods and or Services (even if caused by the Supplier's negligence), nor will any delay caused by the Supplier entitle the

Customer to terminate the Contract.

- 4.4 Where the Customer requests a change to any dates specified in the Contract for the supply of the Goods and or Services the Supplier shall use its reasonable endeavours to conform to such a request, provided always that the Supplier shall be under no obligation to do so, shall have no liability for its failure to do so and is entitled to payment of any additional costs incurred as a result of such change to the dates.
- 4.5 If the Customer amends or cancels an order or instruction, the Supplier reserves the right to claim loss and or expense and or damages incurred at the date of the cancellation or amendment, including loss of profit.
- 4.6 If the Supplier supplies some but not all of the Goods and or Services, the Customer shall not be entitled to object to or reject the Goods and or Services or any part of them by reason of the shortfall and shall pay for such Goods and or Services at the pro rata contract rate.
- 4.7 The Customer shall be following delivery of the goods and or completion of the services and if requested by the Supplier, sign a confirmation slip confirming that the goods have been satisfactorily delivered and or the services satisfactorily performed. Such signed confirmation shall be conclusive evidence of the satisfactory performance by the Supplier of its obligations under the Contract.

## **5 RISK/TITLE**

- 5.1 Where the Contract includes the supply and delivery of goods, or delivery and hire of equipment, risk in and responsibility for the goods and or hired equipment, shall pass to the Customer on delivery. Notwithstanding delivery and passing of risk in the goods (or any other provision of these Conditions) the property in and title to the supplied goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of all sums due under the Contract or which are or which become due to the Supplier from the Customer in respect of any other contract made under these Conditions.
- 5.2 Until ownership of the Goods has passed to the Customer, the Customer must:
  - 5.2.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 5.2.2 store the Goods (at no cost to the Supplier) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
  - 5.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.2.4 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier and evidence of premiums paid; and
  - 5.2.5 hold the proceeds of the insurance referred to in clause 5.2.4 on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.3 Until such time as the property in and title to the goods passes to the Customer (as set out in clause 5.1) the Supplier (and any persons appointed by it for the purpose) shall be entitled (but shall not be obliged) in the event of non-payment by the Customer or the insolvency of the Customer, at any time during normal business hours to enter upon any premises of the Customer or any third party where the goods are stored and to re-possess the goods.
- 5.4 Where the Contract includes the uplift and transfer of goods the Supplier's responsibility for the goods shall commence when the Supplier takes physical control of the goods and shall end when the Supplier relinquishes physical control to the Customer at the proper place of delivery or the goods are presented at the proper place of delivery within normal business hours (allowing sufficient time for unloading). If the Supplier is prevented from making delivery at the agreed time and address, then the Supplier's responsibility for the goods shall end after the expiration of twenty-four (24) hours from the Supplier's notice to the Customer that the goods are available.
- 5.5 Interruptions to work delivered by the Supplier, scheduled and un-scheduled caused by the Customer or other actions non-related but likely to cause a disruption to the normal work period shall result in day work schedules being applied. Day work schedules will fluctuate but would normally consist of a 4-man team, including vehicles and site equipment.
- 5.6 This contract is divisible. The work performed in each period during the currency of the contract shall be invoiced separately. Each invoice for work performed in any period shall be payable by the customer in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in the work performed or to be performed in any period.

## **6 PRICE**

- 6.1 Unless otherwise agreed by the Supplier in writing, the price for the Goods and or Services shall be:
  - 6.1.1 the price set out in the estimate; or
  - 6.1.2 where no estimate exists, such reasonable charge as the Supplier shall subsequently make for supplying the Goods and or Services in accordance with the Supplier's schedule of charges.
- 6.2 The Supplier reserves the right to increase the charges for Services specified in the Order, provided that subject to clause 6.3, such charges cannot be increased more than once in any [12] month period. The Supplier will give the Customer written notice of any such increase [30] days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within [30] days of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Agreement by giving the Termination Notice in writing to the Customer.
- 6.3 Notwithstanding clause 6.2, the Supplier, reserves the right by giving notice to the Customer at any time before or after the commencement of the supply of any of the Goods and or Services hereunder, to increase the price for the Goods and or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier, including but not limited to:
  - 6.3.1 any alteration to or the enactment of any legislation, regulations or any other enactment relating to the supply of the Goods and or the Services;
  - 6.3.2 significant increases to the cost of labour;
  - 6.3.3 any change in the Goods and or Services to be supplied which is requested by the Customer pursuant to clause 3.5 or any change in the dates of the supply of the Goods and or Services which is requested by the Customer pursuant to clause 4.4;
  - 6.3.4 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions necessary for the supply of the Goods and or Services.
- 6.3.5 Where the Supplier exercises its right to increase the price under this clause 6.3 and the Customer objects to the price increase, the Customer shall have the right on notice to the Supplier to terminate the Contract. In such circumstances the Customer shall pay to the Supplier on a pro rata basis the amount due for any goods delivered and or services already performed by the Supplier as at the date of termination.
- 6.4 The price for the Goods and or Services shall be exclusive of any value added tax and any other applicable duties levies and or taxes, which amount the Customer will pay in addition when it is due to pay for the Goods and or Services.
- 6.5 Prices are fixed for 60 days from the date of estimate, after which time the Supplier shall be entitled to make reasonable variations to the price, if required, before the completion of the works.
- 6.6 Prices are given on the basis that access will be available for the purpose of the works, during normal working hours. If such access is not available, the Supplier shall be entitled to make reasonable additional charges for the loss and or expense and or damage so incurred.
- 6.7 Prices do not include for the following, unless specified in the estimate:
  - 6.7.1 welfare facilities, hoists, crane age, power supplies, storage, skips or scaffolding,
  - 6.7.2 removal of loose rubbish, inert or otherwise,

- 6.7.3 removal of hazardous and non-hazardous waste,
- 6.7.4 disconnection of services, fencing, propping, protection or waterproofing of works,
- 6.7.5 diamond cutting and or drilling,
- 6.7.6 removal of foundations.
- 6.8 Unless specifically agreed otherwise, the Customer will be responsible for obtaining all necessary consents relating to the works and shall pay all relevant fees.

## **7 PAYMENT**

- 7.1 Unless the parties agree otherwise in writing, the Supplier shall invoice the Customer upon completion of the services or delivery of the goods.
- 7.2 Payment is due within thirty (30) days of the date of the invoice or by any date agreed in writing between the parties, whichever is the earlier. Time for payment shall be of the essence.
- 7.3 Unless agreed by the Supplier, all sums payable shall be calculated and paid in pounds sterling (£).
- 7.4 Any queries in respect of invoices should be brought to the Supplier's attention within seven (7) days of the date of the invoice. Where any dispute arises as to the contents of any invoice the parties shall enter into good faith discussions to resolve such dispute but, for the avoidance of doubt the Customer shall not be relieved of its obligation to pay the disputed invoice in full and on time.
- 7.5 The Supplier reserves the right to make delivery by instalments and render a separate invoice in respect of each such instalment. If the Supplier exercises its right to make delivery in instalments in accordance with this clause 7.5, then any delay in delivery or failure to deliver any further instalment or instalments shall not entitle the Customer to reject the Contract or the delivery at any other instalment or to withhold payment in respect of any instalment previously delivered.
- 7.6 The Customer shall make all payments due under the Contract without any deduction whatsoever whether byway of set-off, counterclaim, discount abatement or otherwise.
- 7.7 If the Customer fails to pay the Supplier any sum due pursuant to the Contract the Customer will be liable to pay interest to the Supplier on such sum from the due date for payment at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002, accruing on a daily basis until payment is made, whether before or after any judgment.
- 7.8 In addition to its right to charge interest on late payment as set out in clause 7.7, where any sum owed by the Customer to the Supplier under this or any other agreement is overdue or the Customer exceeds its authorised credit limit with the Supplier, the Supplier shall be entitled (but shall not be obliged) to do any or a combination of the following:
  - 7.8.1 to suspend all or any part of the supply of the goods or provision of the services;
  - 7.8.2 to cancel all or any part of any outstanding order;
  - 7.8.3 to refuse to accept any further orders for goods or services;
  - 7.8.4 to suspend any discounts made available to the Customer; or
  - 7.8.5 to exercise its rights to recover the goods pursuant to clause 5.3.In the event that such default continues for longer than thirty (30) days, the Supplier shall be entitled but not bound (without any liability and without prejudice to any other rights that it may have in respect thereof) to terminate the Contract forthwith on written notice to the Customer.
- 7.9 Where the Supplier elects to pursue one of its rights under clause 7.7 and 7.8, the Supplier shall not be in breach of these Conditions nor shall the Supplier have any liability to the Customer.
- 7.10 The Supplier has the right (but not the obligation) to submit its invoice for Goods delivered or for Services performed during each milestone OR key stage of the Contract as specified in the Order; any invoice for a delivery of Goods or Services performed shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of Goods or Services performed in respect of any other instalment.

## **8 LIEN**

- 8.1 Where the services provided by the Supplier include the transfer of goods owned by the Customer (the Customer's goods), the Supplier shall have a general lien against the Customer for any monies whatsoever due from the Customer to the Supplier. If such a lien is not satisfied within a reasonable time, the Supplier may, at its absolute discretion sell the Customer's goods (in whole or in part) as agent for the Customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the Customer's goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the Customer's goods.
- 8.2 Where the services provided by the Supplier include the transfer of goods not owned by the Customer (a third party's goods), the Supplier shall have a particular lien against the owner, allowing the Supplier to retain possession, but not to dispose of the third party's goods against monies due from the Customer in respect of the third party's goods.

## **9 CUSTOMER OBLIGATIONS**

- 9.1 The Customer shall:
  - 9.1.1 provide at the Site adequate and appropriate access to facilitate the supply of the Goods and or Services (the provision of which normally requires the use of heavy goods vehicles) including, but not limited to, the supply of appropriate roadways free from overhanging branches, appropriate man-hole covers and adequate protection for underground drainage runs;
  - 9.1.2 co-operate with all the reasonable instructions of the Supplier in its performance of the Contract and shall provide such assistance to the Supplier as the Supplier may reasonably require;
  - 9.1.3 provide such site information and plans and plans (including but not limited to site plans and drainage plans) as the Supplier may reasonably require to carry out its obligations under the Contract;
  - 9.1.4 (where the services include the uplift and transfer of any Dangerous Goods) provide to the Supplier precise and accurate identification of the Dangerous Goods and any other information, documentation and assistance the Supplier may reasonably require prior to the commencement of the services, in order to allow the Supplier to comply with its statutory obligations or its obligations under the Contract in respect of such Dangerous Goods. This includes (without limitation) the provision of Transport Emergency Cards (Tremcards) to the Supplier and or any other written information as required by the relevant statutory provisions;
  - 9.1.5 (where the services include the uplift, transfer or disposal of any Waste) provide the Supplier with precise and accurate information as to the nature of the waste concerned, and any other information, documentation and assistance the Supplier may reasonably require prior to the commencement of the services in order to allow the Supplier to comply with its statutory obligations or its obligations under the Contract in respect of such Waste.  
For the avoidance of doubt where the Customer fails to comply with its obligations under this clause and the Supplier shall be entitled to delay performance of its obligations without liability until the Customer so complies.
- 9.2 The Supplier operates a strict drugs and alcohol policy referenced P005, available on request which must be adhered to at all times.
- 9.3 The Customer shall be solely responsible for obtaining any legal consents and permissions (which may include planning permission) required for the carrying out of the Services and delivery of the Goods. The Supplier shall not be liable for any failure by the Customer to obtain such consents or permissions.
- 9.4 Unless otherwise agreed in writing by the Supplier, the Supplier shall not have any liability for any damage or other effect that drilling, trenching or permanent boreholes may have on foundations, services or structures at the Site. The Customer shall be responsible for arranging for any appropriate consultants or specialists to advise on the potential impact of the Services and approve the position and construction of such boreholes and trenches prior to commencement of the Services.

- 9.5 If performance of the Contract is suspended at the request of or delayed through the Customer's default the Supplier shall be entitled to payment for any other additional costs thereby incurred including storage, hire charges, labour costs (including the de-mobilisation and re-mobilisation costs of the Company's sub-contractor and agents), insurance and interest.
- 9.6 If suspension pursuant to Clause 9.5 continues for a period of 7 days or more (or the parties cannot agree to any new terms including an increase in Price) the Supplier shall be entitled (without prejudice to its other remedies under the Contract for such breach) to:
- 9.6.1 terminate the Contract immediately by giving written notice to the Customer (and be entitled to payment for loss of profit and payment for Goods and or Services already performed, supplied or ordered); and
- 9.6.2 sell or, at its option, destroy the Goods where title to the Goods has not passed to the Customer to apply the proceeds of sale thereof if sold, and the scrap value if destroyed, towards payment of all sums due to the Supplier under the Contract.
- 9.7 Unless otherwise agreed in writing by the Supplier, all Services to be performed at the Site shall be performed during the Supplier's usual working hours.
- 9.8 The Customer shall indemnify and keep indemnified the Supplier against all and any actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against the Supplier in respect of any loss or damage or personal injury (including death) which arises out of or in connection with the Customer's failure to meet its obligations under this Clause 9.

## **10 CUSTOMER WARRANTIES**

The Customer warrants and represents that:

- 10.1.1 any information provided to the Supplier in respect of any Dangerous Goods is accurate and sufficiently detailed to enable the Supplier to comply with any statutory requirements or regulations applying to the Dangerous Goods and to comply with its obligations under the Contract;
- 10.1.2 any information provided to the Supplier in respect of the Waste is accurate and sufficiently detailed to enable the Supplier to comply with any statutory requirements or regulations applying to the waste and to comply with its obligations under the Contract;
- 10.1.3 it shall comply fully with any statutory requirements or regulations applicable to it in relation to the Waste and or the Dangerous Goods;
- 10.1.4 any other information or instructions it has provided to the Supplier (whether in the order or otherwise) for the purposes of the Supplier quoting for or performing its obligations under the Contract is adequate, complete and accurate in all respects;
- 10.1.5 (where the services involve the uplift and transfer of any goods) the Customer is the legal owner of such goods or is the authorised agent of such legal owner in which case the Customer warrants in addition that he has the authority to accept these Conditions on behalf of the legal owner;
- 10.1.6 it has appropriate procedures in place for the purposes of any applicable health and safety legislation and enforces compliance with such procedures by its employees and other staff.
- 10.2 The Customer shall indemnify and keep indemnified the Supplier against all and any actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against the Supplier in respect of any loss or damage or personal injury (including death) which arises out of or in connection with the Customer's breach of clause 10.1.

## **11 SUPPLIERS OBLIGATIONS**

The Supplier warrants that, provided always that the Customer complies with these Conditions, the Supplier will comply with all statutory and regulatory requirements which may apply to it in connection with Waste or Dangerous Goods,

## **12 QUALITY**

- 12.1 The Supplier warrants to the Customer that (subject to the terms of these Conditions) the services will be carried out with reasonable skill and care. For the avoidance of doubt in relation to tank cleaning, tank removal, demolition, spill response, land remediation and tank and equipment installation services the Supplier shall use its reasonable endeavours to perform the services as requested by the Customer but shall not, in any way, be liable for any residual pollution that the Supplier, having used reasonable endeavours, is unable to remove.
- 12.2 The Supplier warrants to the Customer that (subject to the terms of these Conditions) upon delivery the Goods shall:
- 12.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and or
- 12.2.2 conform in all material respects to any specification provided by the Supplier; as appropriate.
- 12.3 The Supplier shall not be liable for a breach of the warranties in Clause 12.1 and 12.2 unless:
- 12.3.1 the Customer gives written notice of the defect to the Supplier within fourteen (14) days of the time when the Customer discovers or ought to have discovered the defect in the goods or services; and
- 12.3.2 the Supplier is given a reasonable opportunity after receiving the notice of examining such goods or services
- 12.4 The Supplier shall not be liable for a breach of the warranty contained in Clause 12.2 or under any obligation to comply with clause 12.5 if:
- 12.4.1 the Customer makes any use of the Goods in respect of which it has given written notice under Clause 12.3.1; or
- 12.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice
- 12.4.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 12.4.4 the defect is caused by improper use of the Goods or use outside its normal application; or
- 12.4.5 the defect arises due to fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 12.4.6 the Customer (or any of its employees, agents or sub-contractors) alters or repairs the Goods without the written consent of Goods.
- 12.5 Subject to clause 12.3 and 12.4, the Supplier shall at its sole option either replace or correct such goods or services free of charge, or refund the price of such goods or services at the pro rata contract rate and this shall be the sole and exclusive remedy for the Customer in relation to the defective Goods and or Services.
- 12.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 12.5.
- 12.7 The Customer shall indemnify and hold the Supplier harmless against all charges, costs, expenses and liabilities incurred by the Supplier (its employees agents or sub-contractors) as a result of any work carried out pursuant to Clause 12.5 if in the Company's sole opinion (acting reasonably), the defect arose as set out in clause 12.4.
- 12.8 Whilst the Supplier will exercise reasonable skill and care to ensure there is no damage to the Customer's property, the Supplier will accept no responsibility for damage however arising, unless it can be clearly and unambiguously demonstrated to be a result of the Supplier's negligence.

## **13 LIMITATION OF LIABILITY**

- 13.1 The following provision sets out the entire financial liability of the Supplier (including any liability or the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of an Event of Default.
- 13.2 All warranties, conditions and other terms implied by statute or common law or through trade custom or course of dealing are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by the other party's negligence or for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law (including for breach of any obligations implied by Section 12 of the Sale of Goods Act 1979, (as amended), Section 2 of the Supply of Goods and Services Act 1982 nor for damage caused by defective products within the meaning of the

Consumer Protection Act 1987 Part 1).

- 13.4 Subject to clause 13.3:
- 13.4.1 the Supplier's liability to the Customer in respect of each Event of Default shall be limited to the fee payable by the Customer for the Goods or Service that is the subject of the Event of Default.
- 13.4.2 the Supplier's aggregate liability to the Customer in respect of all Events of Default shall be limited to 1.5 times the aggregate fee paid by the Customer in accordance with the Contract or (where the Contract operates for more than 12 months) the fee shall be deemed to be the average sum paid to the Supplier in a 12 month period of the Contract.
- 13.4.3 the Supplier shall not be liable to the Customer in respect of any Event of Default for: (a) loss of profit; (b) loss of use; (c) loss of anticipated contracts and or savings; (d) loss of goodwill; (e) loss of opportunity; (f) loss of business and or business interruption; or (g) any indirect loss or consequential or special loss or damage in each case even if such loss was reasonably foreseeable or the Supplier had been advised of incurring the same.
- 13.4.4 the Supplier shall have no liability to the Customer in respect of any Event of Default unless notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) has been given to the Supplier within 12 months of the Customer becoming aware of the circumstances and in any event within 12 months following delivery which give rise to such claim provided that without prejudice to their rights, the Customer and the Supplier agree that if they have reason to believe that they may have a cause of action hereunder, they shall liaise with the other in an open and co-operative way with a view to rectifying the reason for such cause of action whenever practicable.
- 13.5 For the avoidance of doubt there shall be included in the amounts set out in clause 13.4.1, all legal and other professional fees, costs and expenses incurred by the Customer in establishing and presenting any claim against the Supplier.
- 13.6 The Supplier shall not be liable for any Event of Default caused by:
- 13.6.1 any act or omission of the Customer which is relative to its obligations under the Contract; and/or
- 13.6.2 any failures of any third parties to provide the Goods.
- 13.7 If any advice provided to the Customer by the Supplier was provided free of charge by the Supplier then such advice is provided as is without any warranty of any kind from the Supplier and shall have no liability in relation thereto.
- 13.8 If a number of Events of Default give rise substantially to the same loss or a number of Events of Default flow from the same defect then such Events of Default shall be regarded as giving rise to only one claim under these Conditions.
- 13.9 The Customer hereby agrees to afford the Supplier not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.
- 13.10 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 13.11 The Customer acknowledges that the price of the Goods and or Services is determined on the basis of the exclusions and
- 13.12 limitations of liability contained in these Conditions. The Customer expressly agrees that these exclusions and liabilities are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Customer for a breach by the Supplier of these Conditions may otherwise be disproportionately greater than the price for the Goods and or Services.

#### **14 TERM AND TERMINATION**

- 14.1 The Contract shall come into effect on the commencement date and shall continue in force for the Contract Period.
- 14.2 The Contract may be terminated at any time by the Supplier, with immediate effect from the date of service of a written notice, in circumstances where the Customer fails to make any payment due to the Supplier in accordance with clause 6 of these Conditions.
- 14.3 The Contract may be terminated at any time by either party in the following circumstances, with immediate effect from the date of service of a written notice on the other party:
- 14.3.1 If the other party is in material breach of this Contract and, if the breach is capable of remedy, that party has failed to remedy such breach within thirty (30) days of receipt of notice to do so;
- 14.3.2 if the other party becomes Insolvent.
- 14.4 For the purpose of these Conditions, '**Insolvent**' shall have the following meaning:
- 14.4.1 a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction); or
- 14.4.2 the other becomes subject to an administration order; or
- 14.4.3 a receiver or administrator is appointed over the whole or part of the other party's business; or
- 14.4.4 an encumbrance takes possession of any of the other's property or equipment; or (e) if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986; or
- 14.4.5 if a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or
- 14.4.6 it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- 14.4.7 the other, being an individual or partnership, is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; or
- 14.4.8 anything analogous to the events set out in sub clauses 14.4.1 to 14.4.7 occurs in any other jurisdiction;
- 14.4.9 If the other party ceases or threatens to cease to carry on all or part of its business.
- 14.5 On termination of the Contract for any reason:
- 14.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid Invoices and; in respect of Goods and or Services supplied for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
- 14.5.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

#### **15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 All Intellectual Property Rights produced from or arising as a result of the performance of the Contract shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all such acts, execute all such documents and enter into all such agreements with third parties as are reasonably necessary to ensure that such rights vest in the Supplier.
- 15.2 Ownership of all skills, know how, technique and methods have their origin in the skill and endeavour of the Supplier and shall vest in the Supplier.
- 15.3 The Customer shall indemnify the Supplier against all liability and loss, damage, costs and expenses awarded against or incurred by the Supplier in connection with any claims by third parties arising from the reproduction of the work or report or part of any report prepared in connection with the Contract.

#### **16 CONFIDENTIALITY**

- 16.1 Each party (a receiving party) shall keep secret and not disclose any Confidential Information in relation to the other party (disclosing party). The receiving party shall only use the Confidentiality Information of the disclosing party in relation to the Contract and shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall procure that such employees, agents, representatives and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent

jurisdiction. This clause 15 shall apply during the continuance of this Contract and after its termination howsoever arising without limitation in time.

**17 ASSIGNMENT AND SUBCONTRACTING**

17.1 The Customer shall not be entitled to assign, sub-contract or otherwise dispose of the Contract or any part of it without the prior written consent of the Supplier.

17.2 The Supplier may assign or sub-contract all or any part of its obligations under the Contract to any person, firm or company. Where the whole or any part of the Contract is subcontracted by the Supplier, such sub-contractor shall have the benefit of these Conditions and shall be under no greater liability to the Customer than or in addition to that of the Supplier under the Contract and the Customer agrees with the Supplier that no claim shall be made against a sub-contractor in addition to or in excess of the limitation and or exclusions of liability as set out in these Conditions.

**18 FORCE MAJEURE**

18.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the services ordered by the Customer (without liability to the Customer) and shall not be liable for any failure to meet its obligations under the Contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation: acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), failure of a utility service or transport network, or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials, provided that if the event in question continues for a continuous period in excess of thirty (30) days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer

**19 NOTICES**

19.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

19.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

19.2 Any notice shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

19.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

19.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**20 GENERAL**

20.1 No changes to these Conditions will apply unless they have been agreed to in writing and signed by an authorised signatory of both parties.

20.2 Save where expressly stated to the contrary neither party intends that any third party is to be able to enforce any term of this contract.

20.3 The Contract (incorporating the Conditions and any information sheet provided constitute the entire agreement between the parties in respect of the supply of Goods and or Services to the Customer by the Supplier. The Contract replaces any previous agreement or understanding between the parties.

20.4 The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Contract or for any breach of any representation not contained in the Contract (unless such misrepresentation or representation was made fraudulently).

20.5 The Customer expressly acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

20.6 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

20.7 If any provision of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

20.8 Failure or delay by the Supplier in enforcing or partially enforcing any of its rights or remedies under the Contract will not be construed as a waiver of any of its rights under the Contract and shall not prevent the Supplier from later reasserting such rights or remedies.

20.9 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

20.10 Nothing in the Contract is intended to, or shall operate to, create a partnership or corporate relationship between the parties, or to authorise either party to act as the agent of the other, and neither party shall have the authority to act in the name of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20.11 This agreement 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 the law of England and Wales.

20.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).