

GROUND CONSULTANTS LIMITED
TERMS AND CONDITIONS FOR THE SUPPLY OF CONSULTANCY SERVICES

These Terms and Conditions (these "**Terms**") apply when Ground Consultants Limited is appointed to supply consultancy services to the Client (as defined below). These Terms shall form the basis of the Client's contract with Ground Consultants Limited so please read them carefully before placing an Order.

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Terms:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Commencement Date"	has the meaning given in clause 3.2.
"Contract"	these terms and the relevant Proposal.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
"Client"	the person, firm or company identified on the Proposal.
"Deliverables"	the deliverables set out in the Proposal.
"Fee"	the fee payable by the Client for the supply of the Services in accordance with clause 6.
"Force Majeure Event"	any circumstance not within a party's reasonable control including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors or interruption or failure of utility service.
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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"	the Client's written (via email) acceptance of the Proposal.
"Pollution Insured Claims"	claims relating to pollution and contamination arising out of a breach of professional duty in relation to Phase 1 (desk study), Phase 2 (intrusive investigation), Phase 3 (remediation strategy/design), Phase 4 (verification/validation), and ad hoc consultancy services related to contaminated land (including regulator/client liaison).
"Proposal"	Ground Consultants Limited's written proposal or quotation document setting out a brief of the work, the work program (including a description of the Services), exclusions, assumptions, performance dates, Deliverables and fee schedule.
"Services"	the services, including the Deliverables, supplied by Ground Consultants Limited to the Client as set out in the Proposal.
"Services Start Date"	the start date for the Services which is confirmed in writing by Ground Consultants Limited to the Client after the Commencement Date.
"Site"	the Client's site named in the Proposal.
"Ground Consultants Limited"	A limited company registered in England and Wales with company number 13561213 whose registered office is at 1a Eddystone Road, Wadebridge, Cornwall, United Kingdom, PL27 7AL

1.2 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes email.

2. APPLICATION OF THESE TERMS

2.1 These Terms shall:

- (a) apply to and be incorporated in the Contract;
- (b) apply to all dealings between the Client and Ground Consultants Limited; and
- (c) prevail over any inconsistent terms or conditions provided by the Client, or implied by law, trade custom, practice or course of dealing.

3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Terms.

3.2 The Order shall only be deemed to be accepted when Ground Consultants Limited issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

3.3 Unless agreed otherwise in writing by Ground Consultants Limited, any Proposal given by Ground Consultants Limited shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

4. SUPPLY OF SERVICES

4.1 Ground Consultants Limited shall supply the Services to the Client in accordance with the Proposal in all material respects. The Client agrees that the Proposal has been prepared by Ground Consultants Limited on the assumption that the ground conditions shall be as indicated in British Geological Survey Maps and/or in previous/adjacent site investigations. Ground Consultants Limited reserves the right to amend the Proposal (including any performance dates and the fee schedule) in the event that it discovers unusual or unexpected ground conditions and Ground Consultants Limited shall notify the Client of any such amendments.

4.2 Ground Consultants Limited shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 Ground Consultants Limited reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Ground Consultants Limited shall notify the Client in any such event.

4.4 Ground Consultants Limited shall:

- (a) perform the Services with reasonable care and skill;
- (b) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Ground Consultants Limited's obligations are fulfilled in accordance with the Contract; and

(c) observe all health and safety rules and regulations and any other security requirements notified to it by the Client which apply at the Site.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

- (a) ensure that the information set out on the Proposal is complete and accurate in all material respects;
- (b) at least 5 Business Days before the Services Start Date, notify Ground Consultants Limited in writing of:
 - (i) the location of all utilities and services located at the Site and, where necessary, shall appoint a specialist utility tracing provider (at the Client's own cost). In the absence of doing so, the Client takes full responsibility for any damage caused to underground services inflicted during the course of site investigation works;
 - (ii) any health and safety rules and regulations, any other security requirements and hazards that apply at the Site (including, the presence of asbestos and asbestos containing materials, hazardous chemicals, vagrants, dangerous animals, unsafe ground or buildings);
 - (iii) any unusual ground conditions at the Site;
- (c) co-operate with Ground Consultants Limited in all matters relating to the Services;
- (d) provide Ground Consultants Limited, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by Ground Consultants Limited;
- (e) provide Ground Consultants Limited with such information and materials as Ground Consultants Limited may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) prepare the Site for the supply of the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) keep all materials, equipment, documents and other property of Ground Consultants Limited ("**Ground Consultants Materials**") at the Client's premises in safe custody at its own risk, maintain Ground Consultants Materials in good condition until returned to Ground Consultants Limited, and not dispose of or use Ground Consultants Materials other than in accordance with Ground Consultants Limited's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Proposal.

5.2 If Ground Consultants Limited's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

- (a) without limiting or affecting any other right or remedy available to it, Ground Consultants Limited shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Ground Consultants Limited's performance of any of its obligations;
- (b) Ground Consultants Limited shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Ground Consultants Limited's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Client shall reimburse Ground Consultants Limited on written demand for any costs or losses sustained or incurred by Ground Consultants Limited arising directly or indirectly from the Client Default.

6. PAYMENT

6.1 The Fee for the Services shall be the Fee set out in the fee schedule in the Proposal. The Fee shall be paid in the instalments set out in the Proposal and if not set out in the Proposal shall be paid in one instalment on completion of the Services. If one or more fee schedules is included in the Proposal, the Client shall indicate in its Order which fee schedule has been selected and Ground Consultants Limited will confirm the fee schedule in its written acceptance of the Order.

6.2 Ground Consultants Limited shall be entitled to charge the Client for the cost of services provided by third parties and required by Ground Consultants Limited for the performance of the Services, provided that Ground Consultants Limited has obtained the prior written approval of the Client.

6.3 Ground Consultants Limited shall submit to the Client an invoice for each instalment of Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that Ground Consultants Limited considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.

6.4 Payment shall be due 7 days after the date the Client receives each invoice.

6.5 No later than 5 days after payment becomes due, the Client shall notify Ground Consultants Limited of the sum that the Client considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated.

6.6 The final date for payment shall be 23 days after the date on which payment becomes due.

6.7 Unless the Client has served a notice under clause 6.8, it shall pay Ground Consultants Limited the sum referred to in the Client's notice under clause 6.5 (or, if the Client has not served notice under clause 6.5, the sum referred to in the invoice referred to in clause 6.3) (in this clause 6, the "**notified sum**") on or before the final date for payment of each invoice.

6.8 Not less than five days before the final date for payment (in this clause 6, the "**prescribed period**"), the Client may give Ground Consultants Limited notice that it intends to pay less than the notified sum (in this clause 6, a "**pay less notice**"). Any pay less notice shall specify:

- (a) the sum that the payer considers to be due on the date the notice is served; and
- (b) the basis on which that sum is calculated.

6.9 Where a pay less notice is given in accordance with clause 6.8, the obligation to pay the notified sum in clause 6.7 applies only in respect of the sum specified in that pay less notice.

6.10 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by Ground Consultants Limited to the Client, the Client shall, on receipt of a valid VAT invoice from Ground Consultants Limited, pay to Ground Consultants Limited such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.11 If the Client fails to make a payment due to Ground Consultants Limited under the Contract by the due date, then, without limiting Ground Consultants Limited's remedies under clause 11, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.11 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.13 Notwithstanding clause 6.11, in addition to any rights or remedies Ground Consultant Limited has under the Contract, the client shall be responsible for all reasonably incurred legal costs of Ground Consultants Limited in connection with the enforcement of payment terms under the Contract, including but not limited to pursuing a claim for debt and its subsequent enforcement.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client), including the Deliverables, shall be owned by Ground Consultants Limited or its licensors.

7.2 Ground Consultants Limited grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to use the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.

- 7.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2. The Client acknowledges and agrees that the Services and Deliverables are provided by Ground Consultants Limited exclusively for use by the Client.
- 7.4 The Client grants Ground Consultants Limited a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Ground Consultants Limited for the term of the Contract for the purpose of providing the Services to the Client.
- 8. DATA PROTECTION**
- Ground Consultants Limited shall collect and process information relating to the Client in accordance with its privacy policy (<https://groundconsultants.co.uk/wp-content/uploads/2021/09/Privacy-policy.pdf>).
- 9. CONFIDENTIALITY**
- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, subcontractors or suppliers of the other party, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10. LIMITATION OF LIABILITY**
- 10.1 The total liability of Ground Consultants Limited under these Terms shall not exceed the Fee payable under this Contract or £50,000 whichever is the lesser amount.
- 10.2 The provisions in this Clause 10 set out the entire financial liability of Ground Consultants Limited (including without limitation any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
- any breach of the Contract howsoever arising;
 - any use made by the Client of the Deliverables; and
 - any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 10.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence; or
 - fraud or fraudulent misrepresentation.
- 10.5 Subject clause 10.2, Ground Consultants Limited shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 10.6 Ground Consultants Limited will not be held responsible for damage caused to buried services not identified by the client in clause 5.1 (b) (i). If service plans are not provided by the Client, Ground Consultants shall obtain freely available statutory plans, and will make use of the cable avoidance tool and, where necessary signal generator, at each exploratory hole location. Ground Consultants Limited will not be held responsible for striking any underground services not identified on such plans.
- 10.7 Subject to clause 10.4,
- Ground Consultants Limited shall have no liability for any claim or loss, whether direct or indirect, arising from the presence or release, or possible presence or release, of asbestos or asbestos-containing materials in any form or quantity.
 - Notwithstanding clause 10.7 (a), where any such claim or loss arises from a negligent act, negligent error, or negligent omission by Ground Consultants Limited in the conduct of its business, the total aggregate liability of Ground Consultants Limited shall not exceed the Fee payable under this Contract or £50,000 whichever is the lesser amount.
- 10.8 Neither party shall bring any claim or commence any legal action against the other under this agreement after one year following the date of completion of the Services
- 10.9 This clause 10 shall survive termination of the Contract.
- 11. TERMINATION**
- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, Ground Consultants Limited may terminate the Contract with immediate effect by giving written notice to the Client if:
- the Client fails to pay any amount due under the Contract on the due date for payment; or
 - there is a change of control of the Client.
- 11.3 Unless otherwise agreed in writing by Ground Consultants Limited and without affecting any other right or remedy available to it, Ground Consultants Limited may terminate the Contract by giving the Client two Business Days' written notice.
- 11.4 Without affecting any other right or remedy available to it, Ground Consultants Limited may suspend the supply of Services under the Contract if:
- the Client fails to pay any amount due under the Contract on the due date for payment;
 - the Client becomes subject to any of the events listed in clause 11.1(c) or clause 11.1(d), or Ground Consultants Limited reasonably believes that the Client is about to become subject to any of them; and
 - Ground Consultants Limited reasonably believes that the Client is about to become subject to any of the events listed in clause 11.1(b).
- 12. CONSEQUENCES OF TERMINATION**
- 12.1 On termination of the Contract:
- each party shall destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's confidential information;

- (b) Ground Consultants Limited shall immediately deliver to the Client all materials provided by the Client to Ground Consultants Limited which is in its possession or under its control;
 - (c) the Client shall immediately pay to Ground Consultants Limited all of Ground Consultants Limited's outstanding unpaid invoices and interest and, in respect of Services and Deliverables supplied but for which no invoice has been submitted, Ground Consultants Limited shall submit an invoice, which shall be payable by the Client immediately on receipt; and
 - (d) the Client shall return all of Ground Consultants Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then Ground Consultants Limited may enter the Site or the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 13. FORCE MAJEURE**
- 13.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.2 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months', the party not affected by the Force Majeure Event may terminate this agreement by giving one months' written notice to the Affected Party.
- 14. ASSIGNMENT**
- 14.1 Ground Consultants Limited may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Ground Consultants Limited.
- 15. ENTIRE AGREEMENT**
- 15.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16. VARIATION**
- Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17. WAIVER**
- A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18. SEVERANCE**
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 18 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19. NOTICES**
- 19.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address specified in the Proposal.
- 19.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) 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;
 - (c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- In this clause 19.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 19.3 This clause 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 20. THIRD PARTY RIGHTS**
- No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 21. GOVERNING LAW AND JURISDICTION**
- 21.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 22. DISPUTES**
- 22.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 22.2 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.
- 22.3 The adjudicator shall be appointed by: The Royal Institution of Chartered Surveyors.