

Conditions of Contract for the Supply of Works

The Customer's attention is particularly drawn to the provisions of clause 10.

1.

1.1

In these Conditions, the following definitions apply:

Company: Hogan Construction Limited registered in England and Wales with company number 01754312.

Customer: the person or firm who orders the Works from the Company.

Price: the sum payable by the Customer for the provision of the Works in accordance with the Conditions.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.

Contract: the contract between the Company and the Customer for the supply of Works in accordance with the Quotation, Order and these Conditions.

Works: the works carried out by the Company for the Customer as set out in the Quotation.

1.2

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) 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; and
- (e) a reference to **writing** or **written** includes faxes and scanned documents attached to emails.

2.

2.1

The Customer's written acceptance of the Company's Price and Quotation for the Works provided in writing by the Company to the Customer (**Quotation**) in the Customer's purchase order form, or the Customer's written acceptance of a Quotation for the Works by the Company (**Order**) constitutes an offer by the Customer to purchase the Works in accordance with these Conditions.

2.2

The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order together with a program for the Works which has been previously mutually agreed and credit arrangements satisfactory to the Company have been made, at which point and on which date the Contract shall come into existence.

2.3

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.4

Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Works described in them. They shall not form part of the Contract or have any contractual force.

2.5

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6

Any Quotation given by the Company shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.

2.7

The Company reserves the right by giving written notice to the Customer at any time before the Works are carried out to increase the price of the Works to reflect any increase in the cost to the Company which is due to any factor (including hydrocarbon costs) beyond the control of the Company.

3.

3.1

The Company shall carry out the Works for the Customer in accordance with the Quotation in all material respects.

3.2

The Company shall use all reasonable endeavours to meet any performance dates specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for performance of the Works.

3.3

The Company shall have the right to make any changes to the Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works, and the Company shall notify the Customer in any such event.

3.4

The Company warrants to the Customer that the Works will be provided using reasonable care and skill.

4.

4.1

If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of any or all of the Works until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

4.2

In the event of any delay to the agreed program caused by occurrences outside the control of the Company, then, without prejudice to its common law or statutory rights, the Company may at its discretion:

- (a) if the delay occurs once the Works have commenced, charge for consequential effects in accordance with the current Civil Engineering Contractors Association Schedules of Dayworks; and/or
- (b) agree a new program in accordance with the provisions of Clause 5 hereof; and/or
- (c) treat the Contract as terminated.

5.

5.1

Any variation to the scope or execution of the Works must be agreed in writing. The Company will confirm in writing to the Customer the impact of the variation on the Works program and the Price for the Works.

5.2

If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed the necessary variations to its prices and works.

- 5.3 The variation to the price will be based on the original price given in the Quotation and if this is not agreed, will be based on the current Civil Engineering Contractors Association Schedule of Dayworks.
- 6.
- 6.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides are complete and accurate;
 - (b) co-operate with the Company in all matters relating to the Works;
 - (c) provide the Company with such information and materials as the Company may reasonably require in order to carry out the Works, and ensure that such information is accurate in all material respects; and
 - (d) obtain and maintain all necessary licences, permissions, operating permits and consents which may be required before the date on which the Works are to start.
- 6.2 The Customer is responsible for ensuring it has all necessary types and levels of insurances in place at all times the Company's employees, agents and subcontractors are carrying out the Works on the Customer's site.
- 6.3 The Customer is responsible for implementing all necessary safety, health and environmental policies and to comply with current legislation on the Customer's site whilst the Company's employees, agents and subcontractors are carrying out the Works on the Customer's site including but not limited to induction briefs for the Company's employees, agents and subcontractors.
- 6.4 The Customer shall not, without the Company's written consent, allow any vehicle or plant to use the completed Works prior to the agreed stage completion or handover of the Works. The Customer shall be responsible for any damage caused to the Works, except damage caused by the Company.
- 6.5 Unless specifically itemised in the Quotation, the Customer shall be responsible for traffic safety measures in accordance with the Traffic Signs Manual, complying with the New Roads and Street Work Act 1991 (or any amendment or re-enactment thereof), temporary ramping, lighting, and the sampling and testing of the Works.
- 6.6 The Customer shall be responsible for providing and maintaining adequate water supplies within reasonable distance of the Works with suitable access for the Company's plant and shall make available free of charge a secure area on site for offices and the stock-piling of the Company's materials should this be necessary.
- 6.7 The Company will not be liable for any defects or subsidence arising from the unsuitability or weakness of the formation on which materials are to be laid and the Customer will ensure that such formation is of adequate strength to take the weight of the Company's plant and loaded delivery vehicles up to the maximum legal Gross Vehicle Weight permitted on the Public Highway.
- 6.8 The Customer will provide suitable clean and safe access and egress to the Company's plant, materials and transport directly to the Works. Unless specifically detailed in the Quotation, no allowance has been made for cleaning or any other preparatory work required prior to or during the Works.
- 6.9 Should the Company be required to lay materials against, around or over kerbs, edgings, walls, iron works or other structures, the Company will not be liable for any damage to such items caused by any reasonable pressures exerted on them by the plant and methods employed to lay and compact the Company's materials. It is the Customer's responsibility to ensure that such structures are of adequate strength to support the normal operating loads exerted by compaction equipment.
- 6.10 The adjustment to final level of any covers and frames or other constructions within the Works will not be carried out by the Customer until after the binder course has been laid. The Company's rates do not include for any work involved in setting ironwork to the finished level or reinstatement around ironwork unless specifically itemised in the Quotation.
- 6.11 The surfaces presented to the Company shall be of true line and level and to falls which will in particular ensure the removal of surface water.
- 6.12 To permit accurate laying of the Company's materials, the Customer shall provide and maintain adequate and suitable line and level control, the accuracy of which shall be the sole responsibility of the Customer.
- 6.13 No allowance has been made in respect of any tolerances applicable to existing surfaces or finished levels. The Company's rates are based on the nominal layer thicknesses of materials as set out in the Quotation.
- 6.14 The Customer is required to make available, for inspection and checking levels, the site of the Works, at least two working days before the Works are due to commence. Levels of existing surfaces will be checked and agreed in writing with the Customer's authorised representative before the Works begin.
- 6.15 If, the nominal layer thicknesses of material described in the Quotation are exceeded to meet specified levels, overcome irregularities or any other cause whatsoever, such excess shall be computed from the actual material used as determined from material conveyance notes and density value notified by the Company and shall be paid at the respective rate or rates specified in the Company's Quotation.
- 6.16 Where free edge work is specified, the rates allow for edge wastage on the various layers of the Works but do not allow for any temporary formwork or supports at the edge of the area to be surfaced where there are no kerbs. The Company will not, therefore, be liable for the cost of any additional material to underlying layers provided by the Customer to accommodate the natural angle of repose at carriageway edges of materials laid by the Company.
- 6.17 If the Quotation is submitted in accordance with a specification and /or design which the Customer has stipulated:
- (a) the Company gives no warranty, expressed or implied that such specification and/or design is suitable for the intended purpose or for conditions which are encountered or have to be dealt with; and
 - (b) the Company shall not be liable for any defect including non-compliance with the requirements of the current edition of BS594987 or other applicable standards resulting from the Works being carried out in accordance with such specification and / or design.
- 6.18 In the event of a period of maintenance being agreed, such a period shall commence from the date of completion of the Works. When the Works are carried out in phases there shall be separate completion dates for each phase.
- 6.19 The maximum number of Visits allowed is shown in the Quotation. A visit constitutes the transportation of all equipment, vehicles and plant to site, undertaking some or all of the Works and transporting all equipment from the site (**Visit**). Any additional Visits or extra work will be subject to extra charge for all additional costs incurred.
- 6.20 The Works will be executed during the Company's normal working hours in a five day working week, Monday to Friday inclusive, excluding Bank Holidays. Any additional visits or any work executed outside these hours will be subject to extra charge for all additional costs incurred, including transporting plant to and from site, reduced output and any other consequential effects.
- 7.
- 7.1 Unless otherwise stated, the final value of the Works shall be established and agreed by joint measurement on completion of the Works and such measurement shall be binding on both parties. In the event of the Works continuing for more than one month, interim monthly valuations shall be prepared for the value of the Works executed up to the end of that month. The quantities

- given in the Quotation are approximate and any variation in quantity that results in the Company carrying out the Works uneconomically will warrant an adjustment in the rates.
- 7.2 Any Work instructed to be carried out on a dayworks basis will be paid in accordance with the Civil Engineering Contractors Association Schedule of Daywork rates agreed prior to commencement.
- 7.3 The Company shall submit an invoice in respect of the works either, (i) on completion of the Works (as construed in the sole opinion of the Company) or (ii) in the event of the Works continuing for more than one month, an invoice shall be submitted to the Customer for the value of the Works executed up to the end of that month in accordance with the interim valuation prepared pursuant to Clause 7.1. Unless stated differently in the Contract, the final date for payment of any invoice submitted by the Company is 28 days after the date of the Company's invoice.
- 7.4 Unless previously agreed by the Company, the deduction of retention monies or discount is disallowed. In the event of the Customer failing to make full payment by the final date for payment the Company reserves the right to suspend further Works for the Customer and/or charge interest on any outstanding balances. The rate of interest payable shall be 5% over the Base Rate of the Bank of England which is current at the date of payment.
- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the carrying out of the Works at the same time as payment is due for the carrying out of the Works.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it or its subsidiaries, associated or holding companies by the Customer against any amount payable by the Company to the Customer.
- 8.
- 8.1 Without prejudice to any other rights or remedies of the Company, the Company may by notice in writing terminate the Contract forthwith if the Customer:
- (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order; or
- (b) shall be in breach of any terms of the Contract.
- The Customer shall indemnify the Company for all losses suffered by it as a consequence of such termination.
- 8.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.3 Without limiting its other rights or remedies, the Company shall have the right to suspend the carrying out of the Works under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 8.1(a) or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.
- 9.1 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Works carried out but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Company's materials, equipment, documents and other property. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
10. **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Works Act 1982 (title and quiet possession);
- (d) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability including but not limited to the statutory rights of any Customer who is a 'consumer' within the meaning of the Unfair Contract Terms Act 1977.
- 10.2 Subject to clause 10.1:
- (a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract.
- 10.3 The terms implied by sections 3 to 5 of the Supply of Goods and Works Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.
11. The Customer (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, Quotations, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the Company (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its Works which the Receiving Party may obtain. The Receiving Party shall restrict

disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12.
 - 12.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of supplier or subcontractors.
 - 12.2 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - 12.3 If the Force Majeure Event prevents the Company from providing any of the Works for more than four weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
13.
 - 13.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - 13.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
14.
 - 14.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or a scanned document attached to an email so long as the document is posted to the postal address of the recipient as well.
 - 14.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day (being a day (other than a Saturday, Sunday or public holiday) when banks in London are open) (**Business Day**) after posting, or 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 or e-mail, on the next Business Day after transmission.
 - 14.3 This clause 14 shall not apply to the service of any proceedings or other documents in any legal action. For the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
15.
 - 15.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
 - 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
16. If at any time any one or more of the terms of the Contract or any part thereof, is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted therefrom and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired thereby.
17. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
18. Save in accordance with clause 7.6, a person who is not a party to the Contract shall not have any rights under or in connection with it.
19. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company.
20. Where the Contract is a Construction Contract the Company and the Customer each has the right to refer any dispute under the Contract to Adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with Part I of the Scheme for Construction Contracts (England and Wales) Regulation time of the Notice of Adjudication. The Chairman of The Institute of Civil Engineers shall nominate an Adjudicator, in default or agreement between the parties. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings.
21. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.