

Design and/or Installation Conditions for Shoring and Piling Technology Operations 2016

1. Definitions and interpretation

1.1 In these Design and/or Installation Conditions for Shoring and Piling Technology Operations (“**Conditions**”), the following terms shall have the following meanings:

1.1.1 “**Apparatus**” means the equipment which the Client has instructed the Company to design and/or manufacture and/or install under the Contract.

1.1.2 “**Client**” means the person or organisation requiring the Apparatus to be designed and/or manufactured and/or installed, and includes the Client’s employees, agents, successors and personal representatives.

1.1.3 “**Company**” means the company or firm agreeing to design and/or manufacture and/or install the Apparatus on behalf of the Client, and includes the Company’s employees, agents, permitted assigns, successors and personal representatives.

1.1.4 “**Contract**” means the contract between the Company and the Client for the design and/or manufacture and/or installation of the Apparatus, which incorporates the Company’s quotation and is governed by these Conditions.

1.1.5 “**Contract Price**” means the price agreed by the Company and the Client as payment for the performance by the Company for the design and/or manufacture and/or installation of the Apparatus, which may be a lump-sum price or a time related schedule of rates.

1.1.6 “**Plant**” covers all classes of plant, or replacement plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Company supplies to assist with the installation of the Apparatus.

1.2 In these Conditions:

1.2.1 a reference to “installation” or “install” means the non-subcontracted site work, such as training, attendance and assistance, which will be carried out by the Company whilst under the guidance and control of the site’s main contractor;

1.2.2 any term importing gender includes any gender and any term importing the singular includes the plural and vice versa;

1.2.3 a reference to a “person” includes a natural person, corporate body or unincorporated body (whether or not having separate legal personality) and that person’s successors, personal representatives and permitted assigns;

1.2.4 clause headings are for ease of reference only and shall not affect the interpretation of these Conditions; and

1.2.5 any reference to a statute or statutory provision includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation made under it.

2. Scope of these Conditions

2.1 These Conditions describe the trading policy and practice of the Company for its “design and/or manufacturing and/or installation services”, as distinct from its plant hire services, or any other services, and form the terms and conditions for any design and/or manufacturing and/or installation services provided by the Company.

2.2 These Conditions shall not be varied except with the Company’s written agreement.

2.3 Unless otherwise agreed by the Company and the Client, these Conditions also apply to any additional work that the Company may agree to carry out for the Client and which may arise from or is connected with any aspect of the Contract.

2.4 These Conditions apply to the Contract to the exclusion of any other terms and conditions that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No other terms and conditions shall apply to the Contract unless expressly agreed in writing between the Company and Client. In particular, any terms and conditions specified by the Client on an order form or otherwise shall not be binding on the Company and shall not apply to any aspect of the Contract unless agreed in writing by the Company prior to the commencement of the Contract.

3. Quotations and formation of the Contract

3.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of thirty days, after which the Company reserves the right to revise or withdraw the quotation.

3.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:

- 3.2.1 the delivery, movement and installation of the Apparatus will be carried out under the Company's direction without interruption from the Client, on a clear site with adequate approaches until the Apparatus has been completely installed; and
- 3.2.2 the Client is responsible for ensuring that the ground or other surface will be firm, level and in good condition, and will provide proper support for the loads imposed by the Apparatus, as well as any Plant supplied by the Company needed to assist with the installation of the Apparatus.

Where either of the above circumstances does not apply, the Company may issue a revised quotation. If the revised quotation is not accepted by the Client, the Company may elect to terminate the Contract without further liability to the Client and the Client shall be liable for the costs incurred by the Company prior to the termination and in connection with the termination.

- 3.3 The Contract is created when the Company accepts a written order from the Client for the carrying out of the design and/or manufacture and/or installation of the Apparatus.
- 3.4 The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it.

4. Contract obligations

- 4.1 The Company does not accept the roles of principal contractor or principal designer under the Construction (Design and Management) Regulations 2015, unless agreed in writing by a director of the Company.
- 4.2 The Company will endeavour to use reasonable skill and care in designing and/or manufacturing and/or installing the Apparatus, based on written information supplied by the Client.
- 4.3 The Client shall supply and obtain all relevant information, instructions, consents, licences and agreements without any charge and in a timely manner to facilitate the design and/or manufacture and/or installation of the Apparatus. The Client shall ensure that all information is accurate.
- 4.4 The Company will endeavour to comply with any reasonable schedule of works or timetable stipulated by the Client and agreed by the Company; however, the Company will not be liable for any delay or failure in completing the Contract which is beyond the Company's reasonable control; nor for the Client's losses (whether direct or indirect) arising therefrom.
- 4.5 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or any other matter beyond the Company's reasonable control, the Client shall reimburse the Company for any costs or losses incurred by the Company arising therefrom.

5. Contract Price

- 5.1 Where the Contract Price is calculated on the basis of a schedule of rates, the rates are detailed in the Company's quotation, or on a separate attached sheet, or can be viewed on the Company's website.
- 5.2 The Contract Price may be increased by the amount of any costs incurred by the Company as a result of delays or cancellations in commencing or completing the design and/or manufacture of the Apparatus and/or the installation of the Apparatus on site due to circumstances beyond the Company's reasonable control, including but not limited to inclement weather or industrial action.
- 5.3 Any additional work which the Company is required to perform must be authorised by the Client in writing and will involve an extra charge, additional to the Contract Price.
- 5.4 Any expenses incurred by the Company in performing the Contract will be charged to the Client at cost.
- 5.5 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at the date of invoice.

6. Payment

- 6.1 The Company shall issue invoices as set out in the quotation, or at other times as the Company considers to be reasonable, and the due date for payment shall be the date the Client receives the Company's invoice. Each invoice shall specify the sum the Company considers to be due at the due date for payment and the basis on which that sum is calculated.
- 6.2 The final date for payment shall be 30 days after the date of each invoice, or as otherwise set out in the quotation. Subject to clause 6.3, the Client shall make payment of the full invoiced amount on or before the final date for payment.
- 6.3 If the Client intends to pay less than the sum set out on an invoice from the Company, the Client shall notify the Company not later than 7 days before the final date for payment specifying the sum the Client considers to be due to the Company at the date the Client's notice is given and the basis on which that sum is calculated.
- 6.4 All charges are payable in full and the Client shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Client by another party under any other contract.

- 6.5 If the Client does not make payment of a sum which is due by the final date for payment, the Company has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Client at least 7 days' notice in writing of the Company's intention to suspend performance, stating the ground or grounds on which the Company intends to suspend performance. The right to suspend performance will cease when the Client makes payment in full of the amount due. The Company shall be entitled to payment of its reasonable costs and expenses arising from the suspension.
- 6.6 If the Client fails to pay any sum due under the Contract by the relevant final date for payment, the Company reserves the right to charge the Client for interest and costs under the Late Payment of Commercial Debts (Interest) Act 1998 and/or any other relevant legislation.

7. Copyright and confidentiality

- 7.1 The copyright in all drawings, designs and associated documents produced by the Company shall remain vested in the Company. Subject to all sums due and payable to the Company under the Contract having been paid, the Company grants the Client a full, royalty free, irrevocable, non-exclusive licence to use and reproduce the drawings, designs and associated documents for any purpose connected with the Contract or the project. The Company shall not be liable for the use of the drawings, designs and associated documents for any purpose other than the purposes for which they were provided.
- 7.2 The Client and the Company shall, except as required by law and as may be necessary in connection with the performance of the Contract, maintain the confidentiality of all documentation relating to the Contract unless otherwise agreed in writing.

8. Liability of the Company

- 8.1 The Company shall only be liable for loss of or damage to property or injury to persons when caused **solely** by the Company's negligence in the performance of the Contract and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Client or any third party.
- 8.2 The Company's total liability in respect of all matters arising out of, under or in connection with the Contract (whether arising by breach of contract, tort, breach of statutory duty or otherwise) shall be limited to a total sum of £5,000,000 (five million pounds sterling), unless a different amount is agreed in writing by the Company and the Client and signed on behalf of their directors prior to the commencement of the Contract.
- 8.3 The Company shall have no liability for any loss, damage or injury which is or may be the subject of a claim by the Client against the Company unless:
- 8.3.1 full details of the alleged loss, damage or injury have been notified by the Client to the Company within 21 days of the date of discovery thereof; and
- 8.3.2 any proceedings to enforce any such claim by the Client against the Company are commenced not later than twelve months after the date of occurrence of the event giving rise to the alleged loss, damage or injury.
- 8.4 The Company shall have no liability whatsoever for any defect, loss, damage or injury caused by, or arising from or as the result of, any of the following:
- 8.4.1 Inaccurate or incomplete information given by the Client.
- 8.4.2 Any instructions given by the Client to the Company's employees or agents.
- 8.4.3 Any defect in any equipment provided by the Client.
- 8.4.4 Any act or omission of any personnel supplied by the Client, or by any person under contract to the Client in connection with the Apparatus, except when correctly following the Company's instructions for the purpose of performing the Company's work under the Contract.
- 8.4.5 Delay in commencing or completing the Contract work due to circumstances beyond the Company's control including, but not limited to, any strike or other industrial action or adverse weather conditions.
- 8.4.6 Unexpected or unforeseen subsidence, instability or changes to the ground conditions.
- 8.5 The Company shall not be liable or responsible for any of the following, however arising:
- 8.5.1 Loss or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control.
- 8.5.2 Loss of profit, loss of the use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party or any indirect or consequential loss or damage of whatever nature.
- 8.5.3 Loss or damage to the Apparatus whilst the Apparatus is outside the control of the Company.

8.6 Nothing in this clause 8 is intended to limit or exclude the Company's liability for death or personal injury caused by the Company's negligence or for any other matter in respect of which the law provides that liability cannot be limited or excluded.

9. Termination of the Contract

9.1 The Company may terminate the Contract forthwith by written notice to the Client if:

9.1.1 the Client fails to make payment of any sum due to the Company;

9.1.2 the Client fails to observe and perform the terms and conditions of the Contract;

9.1.3 the Client suffers, or the Company reasonably believes that the Client shall suffer, any distress or execution to be levied against it; or

9.1.4 the Client makes or proposes to make any arrangement with its creditors or becomes insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force.

9.2 If the Company terminates, the Company shall be entitled to be paid (in addition to any amounts which have become due under clause 6) a fair and reasonable amount for work carried out up to the date of termination but in respect of which no amount has yet become due, together with all costs and charges incurred by the Company or to which it is committed.

9.3 If the Client terminates the Contract without the written agreement of the Company, the Client shall be liable for the full Contract Price. If the Company has agreed in writing to the cancellation, the Client shall be liable for such reasonable proportion of the Contract Price as may be assessed by the Company at that time, together with all costs and charges incurred by the Company or to which it is committed.

9.4 Termination of the Contract for any reason shall not determine the operation of any provisions of the Contract which remain capable of operation after termination.

10. Advice

10.1 If advice or information is sought from and/or given by any representative of the Company, the Client understands and accepts that such advice or information is given in good faith and does not relieve or reduce the Client's obligation to make its own independent assessment, unless confirmed in writing by a director of the Company.

11. Company's status

11.1 For the avoidance of doubt, the Company is subject to these Conditions, and so the Company is not a specialist sub-contractor and/or sub-contractor of the Client, and so will not be treated as such.

12. Dispute resolution

12.1 The Client and Company shall in good faith attempt to resolve any dispute arising between them through mediation.

12.2 Notwithstanding clause 12.1, either party may give notice at any time of its intention to refer any dispute arising under the Contract to adjudication. The adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended) and the adjudicator nominating body shall be the Institute of Civil Engineers.

12.3 Where, under Scots law, the Client, the Company or the adjudicator wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

13. Assignment and other dealings

13.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 The Client may not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

14. Severability

14.1 If any provision of the Contract is held to be unlawful, void or unenforceable, then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions, to the extent permitted by law.

15. No waiver

15.1 No failure or delay on the part of either party to exercise any right or remedy under the Contract shall be construed or operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

16. Notices

16.1 Any notice to be given under or in connection with the Contract shall be in writing and may be given to or served on the recipient by any effective means at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the recipient may have specified in writing.

17. Law of the Contract and jurisdiction

17.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with:

17.1.1 the law of England and Wales, if the original site where the Apparatus is to be installed is in England or Wales;

17.1.2 the law of Scotland, if the original site where the Apparatus is to be installed is in Scotland; or

17.1.3 the law of Northern Ireland, if the original site where the Apparatus is to be installed is in Northern Ireland.

17.2 The parties irrevocably agree that the courts of the applicable jurisdiction identified in clause 17.1 shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation, provided that nothing shall limit the right of either party to take proceedings against the other party in any other court of competent jurisdiction for the purposes of enforcing a court judgment.