

Standard Terms and Conditions – March 2019

1.0 General

- 1.1 These terms of engagement and attached fee letter to the client together with the client's written acceptance thereof shall constitute the contract between the Client and Sadler Energy and Environmental Services Ltd ("The Agreement").
- 1.2 The Agreement shall apply in preference to and supersede any previous terms and conditions referred to, offered or relied upon by the Client whether in writing or otherwise.
- 1.3 Client instruction to commence works either written or verbal constitutes acceptance of the terms and conditions.
- 1.4 The agreement shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the non-exclusive jurisdiction of the English courts.
- 1.5 Sadler Energy & Environmental Services Ltd reserve the right to update these terms and conditions as necessary.

2.0 Definitions

The following definitions shall apply to this agreement:

"Client" means the organisation or individual to whom the attached fee letter is addressed.

"Consultant" means Sadler Energy and Environmental Services Ltd.

"Works" means the Works, Project and Scope set out in the attached fee letter in connection with which the Client has engaged the Consultant to perform the Services.

"Services" means the services described in the attached fee letter.

"Additional Services" means any services undertaken by the Consultant beyond those defined in the attached fee letter.

"Fee" means the fees for performing the Services and Additional Services (if any) stated in the attached fee letter.

"Insolvency" means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with his creditors or having a receiver or administrative receiver or administrator appointed of the whole or any part of his assets.

3.0 Consultant obligation

- 3.1 The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and Additional Services (if any). If in the performance of such services the Consultant has discretion exercisable as between the Client and a contractor, the Consultant shall exercise that discretion fairly.
- 3.2 The Consultant will not undertake any "design" work. As a result, no Designer's Risk Assessment will be prepared. The Consultant may make suggestions as to how compliance might be achieved, but these will be suggestions only. Should they be adopted it will be the responsibility of the relevant member of the Client's Design Team to satisfy themselves that the proposals fully meet all the statutory and performance requirements.
- 3.3 The Consultant may sub-contract the performance of any of the Services to a subconsultant. The Consultant shall be responsible for the performance and payment of the sub-consultant.
- 3.4 Subject always to conditions beyond reasonable control the Consultant shall use all reasonable endeavours to perform the Services in accordance with the programme agreed between the Consultant and the Client including subsequent programmes agreed between the two parties.

4.0 Client obligations

- 4.1 The Client shall use his reasonable endeavours to provide to the Consultant without charge and in time so as not to disrupt the performance of the Services by the Consultant all necessary and relevant data and information in possession of the Client, his agents, servants, other consultants or contractors and give such assistance and make such decisions as shall reasonably be required by the Consultant in the performance of the Services.
- 4.2 The Client shall procure any data, information or reports relevant to the Service and not in his possession and required by the Consultant in the performance of the services. The client acknowledges that in the event that such data, information or reports are not procured this may adversely affect the Services provided.
- 4.3 The Client is responsible for keeping the Consultant fully informed of project progression. In particular the Client must advise the Consultant as key decisions are made and milestones reached.

5.0 Payment

- 5.1 Payment by the Client to the Consultant for the performance of the Services shall comprise the Fees and if so agreed the disbursements.
- 5.2 Fees for the performance of the Services and the Additional Services (if any) shall be paid in accordance with the attached quotation.
- 5.3 Payment due to the Consultant under this agreement, shall be made prior to release of final documentation, unless otherwise explicitly agreed in writing by the consultant.
- 5.4 Where time based fees are to be paid they shall be paid by instalments as set out in the attached fee letter and calculated by multiplying the hourly or daily rates applicable to the persons concerned by the number of hours or days (as the case may be) spent by such persons in performing the Services or Additional Services.
- 5.5 The Client may not withhold payment after the final date for payment of any sum due under this Agreement unless the Client gives no later than seven days before such final date a notice specifying the amount to be withheld and the grounds for withholding payment.
- 5.6 All fees are exclusive of Value Added Tax, the amount of which shall be at the rate and in the manner prescribed by law and shall be paid by the Client to the Consultant.

6.0 Additional payment

- 6.1 If the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond the control of the Consultant the Client shall make an additional payment to the Consultant in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered. The additional payment shall be calculated on a time basis at the hourly rates set out in the attached fee letter and shall be paid monthly. The Consultant shall where practicable and if so requested by the Client give an initial estimate of the additional payment likely to be incurred.

7.0 Limitation of Liability

- 7.1 Notwithstanding anything to the contrary contained elsewhere in the Agreement the total liability in the aggregate of the Consultant under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed the sum of:
For Fees less than £10,000, £250,000
For Fees in excess of 10,000, £1,000,000
- 7.2 Subject to paragraph (7.1), but notwithstanding otherwise anything to the contrary contained in this Agreement, such liability of the Consultant for any claim or claims shall be further limited to such sum as the Consultant ought reasonably to pay having regard to his responsibility for the loss or damage suffered as a result of the occurrence or series of occurrences in question, on the basis that all other consultants and all contractors and sub-contractors shall be deemed to have provided the client contractual undertakings on terms no less onerous than those set out in paragraph (3.1) of this Agreement (whether or not they shall have been so provided to the Client) in respect of carrying out their obligation and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to extent of their responsibility.

8.0 Insurance

The Consultant shall maintain professional indemnity insurance sufficient to cover the Consultant's liabilities hereafter for any one occurrence or series of occurrences arising out of the Agreement (other than for claims arising out of pollution or contamination which will be in aggregate) and for the period of six years after completion of the Services, provided always that such insurance is available at commercially reasonable rates.

9.0 Contracts (Rights of Third Parties) Act 1999

Nothing in the Agreement confers or purports to confer on any third party any benefit or right or enforce any term of this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.

10.0 Copyright, licence and publicity and Confidentiality

- 10.1 The copyright in all drawings, reports, specification, bills of quantities, calculations and other documents provided by the Consultant in connection with the Works shall remain vested in the Consultant, but the Client shall have a licence to use all completed documents issued to the Client, other consultant or consultants or contractors for the purpose of the design, construction and completion, maintenance and repair of the Works. In the event of the Client being in default with regards to payment of any Fees or other amounts due to the Consultant under this Agreement, the Consultant may revoke the licence herein granted on seven days' written notice to the Client.
- 10.2 The Consultant shall not be liable for the use by any person of any documents for any purpose other than that for which the same were prepared on behalf of the Client.
- 10.3 The Consultant shall not without the written permission of the Client publish alone or in conjunction with any other person any article, photograph or other illustration relating to the Works.
- 10.4 Client information will not be shared with a third party unless required in the undertaking of the service, as required by accreditation bodies, registration schemes or at the specific request of the Client or where required by Law.

11.0 Adjudication

Where this Agreement is a construction contract within the mean of the Housing Grants, Construction and Regeneration Act 1996, either party may refer any dispute arising under the Agreement to adjudication in accordance with the statutory scheme.

12.0 Termination

- 12.1 In the event of a material breach of this Agreement by either party or in the event of the Insolvency of one of the parties the party who is not in breach or not insolvent may terminate the Agreement upon not less than two weeks' written notice to the other party.
- 12.2 Upon such termination the Client shall pay to the Consultant all monies accrued due to the Consultant up to the days of such termination following submission of the Consultant's invoice therefore and the provision of paragraph (5.0) of the Agreement shall then apply to such payment.
- 12.3 Termination of the consultant's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

13.0 Assignment

Neither party may assign or transfer any benefit or obligation under this Agreement without the prior written consent of the other party.

14.0 Air Test Cancellation

- 14.1 The client shall provide a minimum 48 hours notice to cancel any booked air tests. Should less notice be provided a minimum site visit cancellation charge of £300 excl VAT or 50% of the value of the booked air tests (whichever is higher) will apply.
- 14.2 Where the value of booked plots does not exceed £300, the backstop minimum site fee of £300 applies in all instances unless otherwise agreed in writing with the Consultant.

15.0 SAP & SBEM Calculation Inclusions and Exemptions

- 15.1 Where appointed to carry out SAP/SBEM calculations the Consultant will carry out initial calculation plus one minor design variation of SAP/SBEM calculations within the agreed fee, additional variations will be subject to additional fees at the Consultants discretion. The Consultant will make the Client aware of any additional fees for client acceptance prior to completion of further works.
- 15.2 Where works have already been commenced major design variations, such as architectural redesign or reconfiguration of general arrangement plans will attract additional fees. The Consultant will make the Client aware of any additional fees for client acceptance prior to completion of further works.
- 15.3 Where SBEM calculation quotation has itemised design stage and as built stage independently, as built quotation fee only applies where the Consultant has previously been appointed to carry out design stage calculations.

Errors and omissions excepted.