

APPROVED CLIENT'S TERMS AND CONDITIONS

CLIENT'S TERMS AND CONDITIONS STRUCTURAL INVESTIGATION SERVICES LIMITED

TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

1) General Basis of Tender

- 1.1 Tenders are based on the information provided to Structural Investigation Services Ltd company no: 11231077 ("**SIS**") at the time of enquiry and are subject to any further conditions as stated in SIS's "Covering Letter" to which these terms and conditions "the Conditions" are attached.
- 1.2 The Conditions alongside any specification, schedule of works or other such documentation specifically referred to by SIS within the Covering Letter, the Covering Letter and SIS's quotation/tender documents shall form the basis of the "Contract Documentation". Where there is any conflict, ambiguity or inconsistency between:
 - (a) the specification/schedule of works;
 - (b) the quotation/tender documents;
 - (c) the Covering Letter; and
 - (d) the Conditions,a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.
- 1.3 The prices SIS have quoted for the provision of works and services ("**Works**") are based on market prices and rates of materials and labour, subcontract and transport rulings at the date of the estimate. SIS reserve the right to amend SIS's prices should any of the above change during the acceptance period set out in 1.4 below.
- 1.4 SIS's quotation/tender given to the Client (defined in Clause 4 below) shall not constitute an offer and will remain open for "Acceptance" for a period of fourteen (14) days, unless withdrawn by SIS within that period.
- 1.5 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at SIS's commencement of the Works.
- 1.6 The Client's purchase order or written Acceptance of SIS's quotation/tender (as the case may be) shall constitute the Client's "Order" to purchase Works from SIS in accordance with the Contract Documentation. The Order shall only be deemed accepted when SIS issues written confirmation of the Order at which point and on which date the "Contract" between the parties shall come into existence.
- 1.7 The commencement date of the Works will be subject to the availability of labour, plant and materials.
- 1.8 The Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2) Submitted Rates

- 2.1 SIS reserves the right to amend the quoted prices and rates once the programme for the Works has been agreed if it differs from that provided at tender stage.
- 2.2 The rates and sums provided within the tender/quotation and forming part of the Contract are based on the Works being available in a manner that allows SIS's resources to be used continuously once the programme has been agreed. Should this continuous process be disrupted due to circumstances beyond SIS's control, all additional costs will be reimbursed to SIS by the Client.
- 2.3 Should any protracted period of disruption occur, as defined by SIS, SIS reserves the right to remove SIS's resources until such time as agreed working can be resumed, and a suitable extension to the contract period and reimbursement of additional expenses both agreed with SIS.

3) Works Definition

- 3.1 The Works undertaken by SIS under the Contract will be as defined in SIS's quotation/tender within the Contract Documentation. No further services, duties or obligations may be implied. Any variation to the Works is to be agreed by both parties in writing, in advance (including any change in fees).
- 3.2 SIS will exercise reasonable skill, care and diligence whilst carrying out the agreed Works. SIS will employ only appropriately trained and experienced personnel and will sub-contract work outside their own expertise only to appropriately trained and experienced personnel.
- 3.3 Any Works that are carried out on the railway infrastructure are based on the possession/line block times submitted at tender stage, if such details are not supplied then SIS will base this on a maximum of 10 hours with travel per shift. If possession/line block time are adversely different and affects the ability for SIS to complete within the tendered/quoted rate then SIS shall be entitled to compensation/variations against their original quote in accordance with SIS' standard schedule of rates as amended from time to time and available upon request.
- 3.4 Any Works that are carried out on the highway infrastructure are based on the traffic management agreement submitted at tender stage, if such details are not supplied then SIS will base this on a maximum of 11 hours with travel per shift. If traffic management times are adversely different and affects the ability for SIS to complete within the tendered / quoted rate then SIS shall be entitled to compensation/variations against their original quote in accordance with SIS' standard schedule of rates as amended from time to time and available upon request.
- 3.5 If any additional or varied services are performed without prior agreement or instruction, SIS shall be entitled to be paid a reasonable additional fee as determined by SIS and to a programme extension commensurate with the additional fee. Such additional fee or part thereof, may be included in any subsequent invoice.
- 3.6 In the event that (i) any opening up for inspection, testing and reinstatement or (ii) additional maintenance and repair works are instructed to SIS by the Client on site that were not within the Client's original enquiry, SIS shall be entitled to additional costs and expenses in respect thereof which shall be added to the contract sum together with an appropriate extension of time for completion of the Works if required.
- 3.7 The Contract Documentation is prepared on the basis that all relevant information, as determined by SIS, without charge or delay, will be available for review upon request. Should the actual structure(s)

be different as indicated in previous reports/drawings, SIS shall require instructions on any steps to be taken and reimbursement of all additional costs incurred together with the granting of an appropriate extension of time. These instructions, once agreed in writing by SIS, shall form part of the Contract Documentation.

4) The Client

- 4.1 The Client will be the company, firm or individual who requests or otherwise instructs the Works, and who shall be deemed to be acting as a Principal, not as an Agent, unless otherwise advised and accepted by SIS, prior to commencement of the Works. Acceptance of this by SIS may be conditional.
- 4.2 It will be deemed that the Client either owns or has permission from the owner to carry out the Works on the site as detailed within the Client's enquiry.
- 4.3 The Client shall:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with SIS in all matters relating to the Works;
 - (c) provide SIS, its employees, agents, consultants and subcontractors, with access to the Client's site, premises, office accommodation and other facilities as reasonably required by SIS;
 - (d) provide SIS with such information and materials as SIS may reasonably require in order to supply the Works, and ensure that such information is complete and accurate in all material respects;
 - (e) prepare the Client's site/premises for the supply of the Works;
 - (f) when performing its obligations under the Contract, comply with all applicable laws and regulations from time to time in force;
 - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Works before the date on which the Works are to start;
 - (h) keep all materials, equipment, documents and other property of SIS ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to SIS, and not dispose of or use the Supplier Materials other than in accordance with SIS's written instructions or authorisation; and
 - (i) comply with any additional obligations as set out in the Contract Documentation.

5) Prices

- 5.1 All prices quoted are net, except where specifically stated otherwise.
- 5.2 Unless otherwise agreed in writing, SIS's prices are based on carrying out the Works during normal working hours as set out in the Client's enquiry. Works re-scheduled to be undertaken outside the planned hours within the enquiry and quoted for will be charged as an extra cost to the Contract.
- 5.3 In the event that SIS are unable to carry out the Works due to inclement weather (rain, frost etc) SIS will charge standing time at SIS's agreed shift work rates with additional compensation to cover subcontractor costs at the prevailing rates.
- 5.4 SIS's prices are based on the particulars supplied to SIS by the Client, and any additional work or materials, which were not apparent from those particulars, will be charged as an extra to the Contract. Particulars will be referenced and/or included within the Contract Documentation.
- 5.5 If it is necessary to remeasure the Works, any quantities will be remeasured in accordance with SIS's agreed shift work rates.

6) **Cancellation & Standing Time Charges**

- 6.1 Any cancellation of Works outside of SIS's control will result in the following charges:
- More than 96 Hours before mobilisation works commence = no charge
 - 72 – 96 Hours before mobilisation works commence = 50% of shift rate
 - 0 – 72 Hours = 100% of shift rate
 - Any applicable subcontractor cancellation costs
- 6.2 The above hours exclude Weekends and National Holidays.
- 6.3 The standing time rates set out in SIS's tender/quotation shall apply to all periods when SIS is unable to work due to contractual reasons or any other reasons beyond SIS's control. Standing time will be charged in addition to SIS's agreed shift work rates.

7) **Terms of Payment**

- 7.1 The first "Valuation Date" shall be 28 days after the commencement of the Works by SIS and subsequent Valuation Dates shall be at periods of not less than 28 days thereafter ("**Valuation Period**").
- 7.2 Not less than 4 days before each Valuation Date SIS will submit to the Client its valuation of the Works undertaken during each Valuation Period ("**Payment Application**").
- 7.3 The due date for each Payment Application shall be the Valuation Date to which it relates and the final date for payment shall be 14 days after the due date.
- 7.4 Not later than 5 days following the due date for any Payment Application, the Client shall issue to SIS its "Payment Notice" stating the sum which it believes to be due to SIS by the final date for payment of that Payment Application. Should the Client fail to issue a Payment Notice in response to any Payment Application issued by SIS either in time or at all, then the sum notified to the Client in SIS's Payment Application ("**Notified Sum**") shall become due and payable by the final date for payment.
- 7.5 If the Client wishes to pay less than the Notified Sum, the Client shall serve a notice on SIS no later than 7 days before the final date for payment, specifying the amount considered to be due at the date the notice is served and the basis of the calculation ("**Pay Less Notice**").
- 7.6 Where the final date for payment has passed and the Client has failed to pay the relevant Notified Sum or the sum stated as due in any valid Pay Less Notice, SIS has the right to suspend any or all of its obligations under the Contract and/or to suspend the licence granted under Clause 15 (following which the Client shall not be entitled to copy or use the "Documents", as defined in Clause 15, for the period the licence is suspended), provided that SIS gives the Client at least 7 days' notice in writing of its intention to suspend performance and/or suspend the licence stating the ground or grounds on which it is intended to suspend performance or licences.
- 7.7 SIS will be entitled to claim from the Client such loss and expense as SIS may incur in relation to any period during which the Works are suspended, until the payment to which the suspension relates has been received from the Client in full, without set-off or abatement.
- 7.8 Interest will be charged on any shortfall or late payment at the rate of 8% over the Base Rate of the Bank of England current at the date the payment is due.

7.9 SIS will within 7 days of receipt of payment from the Client in relation to each Payment Application issue to the Client a VAT invoice for the payment received.

8) Governing Law, Jurisdiction and Claims

8.1 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 the law of England and Wales.

8.2 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.

8.3 Any dispute or difference arising under or out of the Contract may be referred to adjudication at any time by either party pursuant to Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended. The Adjudicator shall be nominated by the Institution of Civil Engineers.

8.4 No claim may be made or action or proceedings commenced against SIS under or in connection with the Contract after three years from the earlier of:

- the date of completion of the Works outlined in the Contract;
- the date of last performance of the Works outlined in the Contract; or;
- practical completion of the project to which the Works outlined in the Contract relate.

8.5 In the event of a claim by the Client against SIS in law or otherwise for any alleged omission or other act arising out of the performance of SIS and to the extent that the Client fails to prove such claim then the Client shall pay all costs including legal fees incurred by SIS in defending itself against the claim.

9) Liquidated and Ascertained Damages

SIS will not accept any liquidated and/or ascertained damages unless agreed in writing by SIS.

10) Third Parties, Assignment and Novation

10.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any manner with any or all of its rights and obligations under the Contract. The Client may not assign the Contract nor any benefit under it nor novate it without the prior written consent of SIS. Where the Client seeks SIS's consent to novate its obligations to a new client, as a condition precedent to consent, SIS may require that i) the Client guarantees the performance of the new client's obligations, ii) the form of novation requested by SIS is used, and/or iii) the fees due under the Contract and/or the instalments in which the agreed fee is to be paid are adjusted to reflect the novation.

10.2 No person may enforce any term of the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

10.3 SIS will not provide any collateral warranties or letters of reliance under or in connection with the Contract.

10.4 SIS reserves the right to employ such sub-consultants and specialists as it deems necessary to carry out the Works. Where any other person or persons are engaged by SIS on the Client's behalf, SIS shall have no liability whatsoever for any act, omission, negligence, or otherwise of such person or persons.

11) Insurance, Limitations & Liability

11.1 SIS currently maintains professional indemnity insurance cover for claims as a direct result of SIS's negligence with limits of indemnity of not less than £1,000,000 (one million pounds) in the aggregate, excluding claims arising out of or in any way related to fire safety, cladding or structural engineering design work and subject to any other exclusions and limitations typically included in such policies. So long as such insurance is available in the market at commercially viable rates, SIS shall continue to maintain it for a period of no less than the length of the Contract. SIS also maintains appropriate levels of insurance cover in respect of Public Liability and Employer's Liability. Upon request by the Client, SIS shall provide the Client with a copy of the relevant certificates, or SIS's Insurance Brokers Verification of Insurance letter, to show that the insurances are in place.

11.2 References to liability in this Clause 11 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence; or
- (b) fraud or fraudulent misrepresentation.

11.4 Subject to Clause 11.3, SIS shall not be responsible for and accepts no liability for:

- (a) any damage caused by vibration, structural movement, exploratory works or associated repair works;
- (b) the stability of the structure, which SIS assume, will be static, and/or any movement that may occur in it;
- (c) any consequent loss or damage to works/services such as sewers, drainpipes and cables;
- (d) loss or damage to adjacent property/assets, for which SIS shall be indemnified and held harmless by the Client. SIS must also be given a proper opportunity to assess the risk and comment accordingly before Works in such area are started; or
- (e) damage to fixings and fittings in the vicinity of the Works and the working area or to any vehicles parked adjacent to the working area.

11.5 Subject to Clause 11.3 and Clause 11.4:

- (a) SIS shall not be liable for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
- (b) the total aggregate liability of SIS arising in connection with the performance or contemplated performance of the Contract shall be limited to five times the total charges paid by the Customer for the Works.

11.6 Existing buildings, structures or elements thereof will be 'as found', and the concrete and other surfaces may be wholly or partially covered, hidden, remote from view, weathered and discoloured, and due regard must be made for consequential errors and omissions due to such factors.

- 11.7 The preparation of any budget quotation for future repair work will be for guidance purposes only. Due to the uncertainty of the extent of concrete that will need to be cut out/repaired, any budget quotation must be treated as a subjective estimation, and due regard should be taken to this fact.
- 11.8 Opinions, recommendations and advice will be based upon the results obtained from the procedures, tests and methods employed, together with relevant experience etc. Due care and allowance must be made when considering any of the above in isolation or in circumstances other than those described within the quotation/tender.
- 11.9 SIS shall not be responsible to the Client for any losses arising out of a Force Majeure Event. For the purpose of the Conditions a "Force Majeure Event" means any event, or a series of events, that is outside the reasonable control of the party affected. These include but are in no way limited to Acts of God, industrial disputes, changes to the law, acts of governments, effects of economic upheaval, plagues, epidemics, disasters, explosions, fires, floods, riots, terrorist attacks and wars.

12) Confidentiality and Publicity

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (i) 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 12; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 SIS reserve the right to use the project as marketing and promotional material, including photographs and sections of reports. SIS will request permission to use the Client's name on any promotional material and will only do so on acceptance of use.

13) Intellectual Property Rights and Liability

- 13.1 The intellectual property rights in all test results, interpretative comments, opinions, reports, advice or other similar documentation produced ("Documents") and provided by SIS in providing the Works shall be owned by SIS but SIS grants to the Client, subject to Clause 7, non-exclusive royalty free licence to use the Documents for the sole purpose for which they were prepared and provided by SIS.
- 13.2 SIS's report(s) should not be reproduced either wholly or in part without the prior written approval of SIS. The Client shall not sub-licence, assign or otherwise transfer the rights granted in Clause 13.1.

- 13.3 The Client grants SIS a non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to SIS for the term of the Contract for the purpose of providing the Works to the Client.
- 13.4 SIS accepts no liability for any charges, costs (including legal costs) or expenses in respect of, or in relation to, damage to any property, or any other loss however arising, either directly or indirectly from the use of a SIS report or budget quotation, the carrying out of any recommendations, the following of any advice or the use of any methods, materials and practices referred to therein.
- 13.5 All SIS Documents are produced for the benefit of the Client alone. SIS will not accept any responsibility to any third party to whom Documents may be shown, or who acts upon its contents or recommendations. The Client shall indemnify and keep indemnified SIS against any losses, claims, costs, damages, or expenses arising out of or in connection with the use of the Documents by third parties.

14) Suspension and Termination

- 14.1 SIS shall be entitled to suspend any or all of its obligations under the Contract on seven (7) days' notice if, for reasons outside SIS's control, SIS considers that it is impossible or irresponsible for it to perform all or part of the Works.
- 14.2 Without effecting any other right or remedy available to it, either party shall be entitled to terminate the Contract if:
- (a) the other party commits any material breach of the Contract (including without limitation a failure to pay any sums due on or before the final date for payment) and in the case of a breach capable of remedy has not remedied the breach within seven (7) days of being served a notice to do so;
 - (b) 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;
 - (c) 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
 - (d) 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.
- 14.3 On termination of the Contract:
- (a) the Client shall immediately pay to SIS all of SIS's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has been submitted, SIS shall submit an invoice, which shall be payable by the Client immediately on receipt; and
 - (b) the Client shall return all Supplier Materials to SIS and any Documents which have not been fully paid for.
- 14.4 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.

14.5 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.

15) General

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 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.3 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.

15.4 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 15.4 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.

15.5 (a) 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 or sent by email to the address specified in the Contract Documentation.

(b) Any notice shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) 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

(iii) 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 15.5(iii) 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.

(c) This Clause 15.5 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.