

STANDARD TERMS & CONDITIONS OF ENGAGEMENT FOR STRUCTURAL AND SITE INVESTIGATIONS

1 Services to be Provided Testing & Consultancy Services Limited (hereafter TCS) agrees to provide for the Client's exclusive use the services set out in the attached Proposal subject to the following Terms of Engagement which shall form part of the contract with the Client. No variation to these terms shall apply unless agreed in writing. TCS will exercise reasonable skill, care and diligence in undertaking its agreed services and shall perform the services solely in relation to the subject matter of the work as expressly identified in the proposal.

2 Intellectual Rights No intellectual rights are transferred to the Client by the Contract unless specifically stated in the Proposal.

3 Copyright Material TCS at all times shall retain copyright of all drawings and data and other documents produced in connection with the Works and/or Project. Any licence to copy and use such material will only be granted by TCS on payment of all outstanding fees. TCS will not be liable for the consequences of any use of the drawings, reports or documents for any purpose other than that for which the same were prepared and provided.

All documents, information and reports provided by TCS are for the sole and exclusive use of the client for whom they have been prepared. No assignment of the benefit of the contract may take place without TCS's prior express written consent. Letters of Reliance based upon standard formats and, subject to TCS's agreement may be provided for a minimum charge of £185.00 for each named beneficiary unless the provision of such is accepted as part of the tender process. Full assignment of reports shall be chargeable at 15% of original invoice value, subject to a minimum charge of £500.00.

4 Information Regarding Hazardous Substances or Conditions The Client agrees to inform and keep informed TCS of any known hazardous substance or condition on or adjacent to the Works and/or Project that could be damaging to equipment, health or the environment.

5 Location of Services The Client agrees to acquire and provide TCS with the location of all services and underground features of which they have knowledge and which are relevant to the Works and/or Project to be undertaken.

Whilst TCS shall take all reasonable precaution we shall not be held responsible for any damage or the consequences of any damage to buried services such as cables, pipes, sewers etc., the positions and nature of which were not clearly indicated to us in writing prior to the commencement of work nor reasonably evident on site.

6 Client's Obligations The Client agrees to provide all necessary licences, permits, registers, rights of access, wayleave data, planning conditions and any other necessary information required of the Client for the satisfactory completion of the Works and/or Project being undertaken by TCS.

7 Loss or Injury The Client shall be responsible for any loss, injury or damage arising from actions by him and his Contractors and shall indemnify TCS against all claims in that respect.

8 Damage The Client agrees to indemnify TCS for any damage necessarily caused in carrying out the Works and/or Project. No liability will be accepted by TCS for permanent reinstatement unless specifically stated in the Proposal.

9 Ground Reinstatement Unless a specification is provided in writing by the Client, prior to tender, boreholes and other excavations will be backfilled with arisings and compacted as far as is possible using the excavation plant. Surplus spoil will be heaped over the excavation and left in a tidy condition before TCS leaves site. TCS **will not** remove surplus spoil from site unless specifically provided for within their quotation.

10 Soil and Groundwater TCS's work will be based on the soil and groundwater conditions revealed in boreholes and excavations supplemented by site and laboratory test results. No responsibility can be taken for conditions not revealed. Records of water levels are not to be taken as equilibrium conditions unless specifically noted. An absence of water level observations may indicate that the hole has been sealed off by casing or the presence of low permeability strata and does not necessarily indicate that water is not present.

11 Priority Over Other Orders The Parties agree that these Terms of Engagement shall govern over any Client Orders which are signed by the Parties as a matter of convenience to both Parties. In the event of conflict between these Terms of Engagement and the proposal, then these Terms of Engagement shall take precedence.

12 Validity Proposals are valid for a period of sixty days from the date on the quotation/covering letter unless stated otherwise in the Proposal.

13 Cancellations Any cancellations or postponements are subject to charges as shown below to cover abortive costs. Frustrated access incidents where the TCS team are unable to gain entry to a site through no fault of their own shall also incur a compensatory charge. (Notice Period: 48 hrs+: POA / 48 hrs: 50% / 24 hrs: 100% / Frustrated Access: 100%).

14 Payment Terms All monies due from the Client to TCS shall be paid within fourteen days of the date of submission of the account. Any sums remaining unpaid at the end of this period shall accrue interest from day to date at the rate of 4% per annum above the base lending rate of HSBC Bank PLC. All legal fees and other costs whatsoever incurred by TCS in collecting any outstanding amount shall be paid by the Client. If any item or amount of an invoice is disputed or subject to question by the Client or his representative, the Client shall not withhold the undisputed amount.

The person or persons firm or company placing the order or instructing TCS will be responsible for ensuring payment in full of all invoices. A charge of £45.00 (+ VAT) will be levied for any re-issued report and/or invoice.

If a client is unknown to us, or is known to have a poor credit rating and/or poor payment record, then we reserve the right to raise a Pro-forma invoice which will need to be settled in full with cleared funds before any results and/or report can be issued. In certain circumstances we may ask for 50% to be paid upfront with the remaining 50% due upon receipt of the final report.

If, after 120 days from the date of invoice, payments are still outstanding, the Client shall not be permitted to rely on the Report(s), and we shall not be liable (whether in contract or in tort or in delict or in negligence or for breach of statutory duty or otherwise) in relation to the Reports until receipt of all outstanding payments.

15 Ownership of Documents The Client agrees that all documents and other deliverables if not fully paid for will remain the property of TCS and shall be returned upon demand and will not be used by the Client or any other entity for any purpose whatsoever.

16 Reporting The recommendations made and opinions expressed in our reports are based on the conditions revealed by the site works as indicated on the site record sheets, together with an assessment of the data from the insitu and laboratory testing. No responsibility can be accepted for conditions which have not been revealed by the site works, for example, between test locations.

17 Law These Terms of Engagement shall be governed by the Law of England and the parties hereby submit to exclusive jurisdiction of the English Courts.

18 Confidentiality TCS will keep confidential any data or information or documents provided by the Client indicated as confidential and will not publish, distribute or release such data or information or documents to a third party unless written permission is granted by the Client.

19 Liability & Insurance TCS maintains professional indemnity insurance and will use its reasonable endeavours to maintain such insurance for so long as it has any liability under the appointment. TCS will have no liability to the Client whether in contract or in tort except to the extent that such liability is covered by its professional indemnity insurance and TCS shall, in any event, have no liability to the Client, or any other party, for any indirect or consequential loss suffered by the Client including, but not limited to, loss of profits. Unless noted otherwise the limit of professional indemnity insurance shall not exceed £1 million in aggregate.

Provided always that any such liability of TCS shall be limited to such sum as TCS ought reasonably to pay having regard to its responsibility for the same on the basis that all other parties providing design, management, financial services, labour, materials, plant or equipment for incorporation in the Works and/or Project or executing the Works and/or Project or any part thereof shall be deemed to have provided contractual undertakings on terms no less onerous than that set out in the Terms of Engagement to the Client (whether or not they shall have been so provided to the Client) in respect of the provision of their services or labour or materials or plant or equipment in respect of executing the Works and/or Project or any part thereof and shall be deemed to have paid to the Client such contribution which it would be just and equitable for them to pay having regard to the extent of their responsibility for any loss or damage.

The Client shall indemnify and keep indemnified TCS from and against all claims proceedings/damages, costs, charges and expenses arising out of or in connection with these Terms of Engagement the Works and/or Project in excess of the liability of TCS agreed in these Terms of Engagement.

No action or proceedings under or in respect of these Terms of Engagement whether in contract, in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against TCS after the expiry of the period of 6 years from the date of acceptance of TCS's Proposal and Terms of Engagement or such earlier date as may be prescribed by law.

20 Where the services offered by TCS do not specifically include advice on pollution and contamination or, where a partial or reduced scope of services has been instructed, the following Limitations of Liability Clause shall apply :-

It is hereby agreed that notwithstanding anything to the contrary contained elsewhere in these Terms of Engagement whether in contract in tort in negligence or for breach of statutory duty or otherwise for any claims which may arise out or in connection with pollution or contamination is excluded.

21 Where the services offered by TCS specifically includes advice on pollution and contamination the following Limitations of Liability Clauses shall apply :-

- a. *the direct costs incurred by the Client in clearing up the site of the Works and/or Project or any part or parts thereof*
or
- b. *A sum equal to a maximum to a maximum of five times the final account sum due to TCS or if lesser, the amount if any recoverable by TCS in respect of such claims under any professional indemnity insurance policy taken out by TCS.*
- c. *The Client acknowledges that the services detailed in this quotation may not be sufficient in scope to facilitate discharge of specific planning conditions related to Contaminated Land and unless otherwise stated, this does not constitute an offer to provide all necessary services until such a condition is discharged. Further sampling, testing and consultation may be required by way of addition on the basis of our findings or the response of statutory regulators; for which further quotation will be made available upon request. Notwithstanding the foregoing, consultation services which are required beyond the scope of this quotation will not be unreasonably withheld, but may attract additional fees.*
- d. *TCS accept no responsibility for the submission of any documents as may be required to obtain dismissal of planning conditions, nor will be liable for any fees relating to planning submissions of discharge of conditions to planning consent.*

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

23 Asbestos Surveys TCS shall only undertake Asbestos Surveys to the standards identified within the Health & Safety Executive's publication HSG264. Given the way in which Asbestos Containing Materials has been used in concealed and composite elements during the construction of buildings, some asbestos may only be detected during the course of demolition. Whilst every effort will be made to identify ACMs' we will accept no responsibility for future ACM discovery which was not identified within our report where they may reasonably be considered not to have been visible at the time of survey.

24 Outstanding Matters It is agreed that all matters not referred to herein shall be determined in accordance with the relevant current Conditions of Engagement issued by the Association of Consulting Engineers and the ICE Terms of Engagement.