

MSA ENVIRONMENTAL LIMITED

TERMS AND CONDITIONS B: FOR CONTRACTS FOR SUPPLIED AND/OR INSTALLED GOODS

1. DEFINITIONS

1.1 In these terms and conditions

"Contract"	Means the Contract for Services or Goods supplied
"Contractor"	Means MSA Environmental Limited of PO Box 3611, Trowbridge, BA14 0TY, England
"Customer"	Means the person or company specified to whom the Goods and Services will be provided
"Plant"	Means the site and property of the Customer specified at which the Services or Goods are to be installed
"Price"	Means the sum or sums specified to be paid by the Customer to the Contractor for the Goods and/or Services

1.2 The underlined headings in this Contract are for reference only and shall not be deemed to form part of the Terms and Conditions nor shall they affect the construction thereof.

2. CONTRACTORS OBLIGATIONS

2.1 In consideration of the payments to be made by the customer, the Contractor agrees to carry out and complete the supply and/or installation of the Goods and/or Services at the Customer's plant.

2.2 In providing and/or installing the Services and/or Goods the Contractor shall:

- I. carry out all work in a good and workmanlike manner.
- II. comply with all reasonable Health & Safety and security procedures notified in writing in it by the Customer.
- III. exercise reasonable skill and care in the design of any part of the supplied Goods or Services.
- IV. not be responsible for the actions of any of the Customer's employees or nominates sub-contractors

2.3 The contractor does not exclude or restrict its liability.

- a) For death or personal injury resulting for the Contractors negligence or the negligence of the employers acting in the course of their by the Contractor, or insofar as any exclusion or limitation of the Contractors liability hereunder is otherwise prohibited, void or unenforceable by law.
- b) insofar as any exclusion or limitation of the Contractors liability hereunder is otherwise prohibited, void or unenforceable by law.

2.4 Subject to clause 2.3 above the undertakings referred to the 2.2 above are in substitution for and shall replace and conditions and warranties on the part of the Contractor implied by statute, common law or otherwise all of which are expressly exclude. The Contractor does not make or give, nor has any servant or agent of the Contractor authority to make or give any representation or undertaking beyond that referred to in the Contract.

2.5 It is the Customer's responsibility to satisfy itself that the Goods and/or Services are suitable for its requirements and the Customer shall be deemed to have full knowledge of the nature and properties of the Services and/or supplied Goods.

2.6 In the event that, notwithstanding the preceding provision of the clause 2 the Contractor is found liable for any loss or damage suffered by the Customer that liability shall in no event exceed monies paid by the Customer to the Contractor under the Contract.

2.7 Notwithstanding anything else contained in the Contract, under no circumstances shall the Contractor be liable to the Customer, either in Contract or in tort, for any indirect, incidental or consequential loss suffered by the Customer on account of any act or omission on the part of the Contractor. "Consequential loss" shall include loss or profit, goodwill or any other financial loss, any payment made or due to any third party, and any loss or damage caused to any property belonging to the Customer or any third party.

3. CUSTOMER'S OBLIGATION

3.1 The Customer shall supply all necessary data and information to enable the Contractor to prepare its design and proposals, and furthermore shall warrant that all information so provided is accurate and complete.

3.2 The Customer shall accept and check delivery of Goods to the plant and allow the Contractor and his agents access to the plant for such delivery. Suitable undercover storage should be provided for all such Goods, which should ensure their safety from fire, theft and vandalism. The Customer shall indemnify the Contractor against any loss suffered by the Contractor as a result of the Customer's failure to so ensure.

3.3 The Customer shall allow the Contractor free and unimpeded access to the plant for the purpose of carrying out the works. The Contractor will work normal hours applicable to the engineering industry, Monday to Friday inclusive, local public holidays excepted.

3.4 The Customer shall be responsible for obtaining all statutory approvals necessary for the installation and operation of the Goods and/or Services, including planning permission, consent to discharge effluents, etc

3.5 The Customer shall be responsible for site safety and for the proper provision of health and welfare facilities on the plant

4. PAYMENT

4.1 Punctual payment is the essence of the Contract and pre-payment of instalment and stage payment is a condition precedent to further deliveries and work. The Customer shall make all stage payment as specified, and shall pay the Contractor's invoices within 30 days of their date.

4.2 The Contractor may change interest on any overdue payments at the rate of 2% above the Lloyds TSB plc base rate.

4.3 All goods and materials supplied by the Contractor shall remain the Contractor's property until the Customer has made full and final payment. In the event of any default by the Customer in payments under the Contract, the Contractor shall be entitled to dismantle and remove any goods and materials supplied pursuant to the Contract and the Customer hereby grants to the Contractor an irrevocable licence to enter the plant for this purpose.

4.4 The Customer shall pay to the Contractor the total amount of valued add tax properly chargeable by the Contractor on the supply of Goods and/or Services under the Contract.

5. TERMINATION

5.1 The Contractor shall at its sole election be entitled forthwith to terminate or treat as terminated the Contract if:

- I. the Customer commits a breach of the terms and conditions of the Contract, or
- II. the Customer is in breach of any of its warranties under clause 3; or
- III. the customer becomes bankrupt or if a petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of its undertaking or assets or if the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1968 or if the Customer passes a resolution for its winding-up or makes any composition or arrangement with its creditors; or
- IV. The Customer ceases to own or occupy the plant.

5.2 Without prejudice to the rights of the Contractor under common law the Contractor shall in the event of termination as aforesaid be entitled to payment for all claims and invoices already submitted at the date of termination and payment for all works that it has undertaken pursuant to the Contract and/or further instruction of the Customer.

6. WARRANTY AND LIABILITY

6.1 The Contractor will at its option either replace, repair or issue credit to the Customer for any goods found to be defective within 12 months from date of delivery to site, provided that:

- I. the Contractor is notified in writing within 7 days of the discovery of any defects.
- II. the defective goods are returned pre-paid to the Contractor, or its suppliers as appropriate, for examination to establish that such defects exist and have not been caused by misuse, neglect, lack of proper or specified maintenance, improper installation or repair, alteration or accident
- III. this warranty does not extend to any products of an experimental or prototype nature or sold but not manufactured by the Contractor. In the case of products not manufactured by the Contractor, the Contractor will so far as possible pass to the Customer the benefit of any guarantee or warranty given by the suppliers

6.2 Save as is expressly provided in these conditions, the Contractor shall not be liable to the Customer in respect of any failure or part failure of any part of the Contract, including liability for any indirect or consequential loss or damage of whatever kind and however caused. All conditions, warrants or other terms expressed or implied are hereby excluded.

7. COPYRIGHT AND CONFIDENTIALITY

7.1 Neither the Customer nor the Contractor shall at any time during the term of the Contract disclose or allow to be disclosed to any person any confidential information relating to the business affairs of the other or permit any person other than the Contractor or appointed sub-contractors to assist in the provision of the Contract unless that person has signed a confidentiality undertaking in a form approved by the Customer and the Contractor.

7.2 The copyright and property in all drawings prepared or supplied by the Contractor in pursuance of the Contract shall remain vested in the Contractor.

7.3 All drawings, specifications and other documents supplied by the Contractor pursuant to the Contract are given in confidence and may not be used, copied or disclosed to third parties by the Customer without the prior written permission of the Contractor.

8. GENERAL

8.1 These Terms and Conditions of contract shall not be varied by any antecedent terms conditions or representations whether written or oral and shall not be varied except by written memorandum signed by or on behalf of both the parties hereto.

8.2 The Contractor shall not be liable to the Customer for any failure to comply with its obligations under the Contract where such failure results from any matter beyond the Contractor's reasonable control including (without limit) conditions of adverse weather, Acts of God, industrial disputes, emergency, inability to obtain supplies or acts of its sub-contractors or agents.

8.3 These Terms and Conditions together with any other documents incorporated in the contract constitute the whole agreement between the parties and supersede any prior promises or representations (whether oral or in writing). No contract shall be made until the Contractor has accepted in writing an order placed by the Customer. If these conditions differ from the terms of any offer made or order placed by the Customer any subsequent communication by the Contractor constitutes a counter-offer and non acceptance of such terms. Any conduct of the Customer which confirms an agreement for the supply of the Goods and/or Services by the Contractor shall constitute an unqualified acceptance by the Customer of these conditions.

8.4 Any notice to be given hereunder shall be in writing to either party's normal place of business, and if sent by first class post shall be deemed to be served on the second business day after posting.

8.5 The Contractor reserves the right to sub-contract the performance of the Contract or any part thereof.

8.6 All documents, drawings, specifications and other descriptions and details in catalogues price lists, quotations and other documents are only illustrative of the type of product and do not constitute warranties, conditions or representations.

8.7 The Contract shall be governed by and construed in accordance with English law and shall be subject to the non-exclusive jurisdiction of the Courts of England.

8.8 This Contract is personal to the Customer specified and may not be assigned delegated or otherwise transferred in whole or in part without the written consent of the Contractor.