

MSA ENVIRONMENTAL LIMITED

TERMS AND CONDITIONS C: - FOR EFFLUENT PLANT SERVICE CONTRACTS

1. DEFINITIONS
- 1.1 In these Terms and Conditions:
 - "Contract" means the Contract for Services described.
 - "Contract Period" means the period specified from the Effective Date.
 - "Contractor" means MSA Environmental Limited of PO Box 3611, Trowbridge, BA14 0TY, England.
 - "Customer" means the person or company specified to whom the Services will be provided.
 - "Effective Date" means the date specified from which the contract period is to run.
 - "Plant" means the property of the Customer specified at which the services are to be provided.
 - "Price" means the sum or sums specified to be paid by the Customer to the Contractor for the services.
 - "Services" means the works of operation and/or maintenance specified.
- 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. CONTRACTOR'S OBLIGATIONS
- 2.1 The Contractor agrees to provide the Services to the Customer at the Plant in accordance with the Terms and Conditions set out herein including any Special Conditions set out overleaf. In the event of any conflict arising between the Terms and Conditions and any Special Conditions then the Special Conditions shall prevail.
- 2.2 In providing the Services the Contractor shall:
 - (i) carry out all the Services in a good and workmanlike manner;
 - (ii) comply with all reasonable Health & Safety and security procedures notified in writing to it by the customer;
 - (iii) use reasonable endeavours to inform the Customer forthwith in the event of any significant breakdown of the Plant or any other significant incident affecting the operation of the Plant;
 - (iv) use reasonable endeavours to notify the Customer in writing of all the works of maintenance repair replacement or renewal which may be necessary in order to secure the contained and proper operation of the Plant PROVIDED THAT save where such works form part of the Services the Contractor shall be under no obligation to carry out such works;
- 2.3 The Contractor does not exclude or restrict its liability:
 - (a) for death or personal injury resulting from the Contractor's negligence or the negligence of its employees acting in the course of their employment by the Contractor; or
 - (b) insofar as any exclusion or limitation of the Contractor's liability hereunder is otherwise prohibited, void or unenforceable by law.
- 2.4 Subject to clause 2.3 above the undertakings referred to in clause 2.2 above are in substitution for and shall replace all conditions and warranties on the part of the Contractor implied by statute, common law or otherwise all of which are expressly excluded. 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 Services are suitable for its requirements and the Contractor does not profess to have any special skill or judgement in relation to the particular needs of the customer. The Customer shall be deemed to have full knowledge of the nature and properties of the Services.
- 2.6 In the event that, notwithstanding the preceding provisions of this 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 a third party, and any loss or damage caused to any property belonging to the Customer or any third party.
3. CUSTOMER'S OBLIGATIONS
- The Customer shall:
 - (i) permit the Contractor to have access to the Plant at such times as are necessary to enable the Contractor to provide the Services;
 - (ii) ensure that the plant shall comply with all Health & Safety and environmental and other statutory requirements relating thereto and shall meet the costs of such compliance;
 - (iii) notify the Contractor forthwith of any material change to the Customer's cleaning or operating regime relating to the plant;
 - (iv) notify the Contractor in writing of all Health & Safety and security procedures relating to the plant;
 - (v) supply in writing to the Contractor before the Services are provided all information relevant to the cleaning maintenance and operation of the Site and a full description of the Plant including the accessories comprised in it or used in connection with it.
4. CUSTOMER'S WARRANTIES
- The Customer warrants that:
 - (i) all information provided to the Contractor in accordance with clause 3 (v) is accurate and complete
 - (ii) the Plant is and will remain capable of operating in accordance with all Health & Safety and environmental and other statutory requirements
5. REMEDIAL WORKS
- Where the Contractor reasonably considers that emergency repair replacement or renewal works are necessary to ensure the continued and proper operation of the Plant the Contractor shall be entitled to carry out such works and recover from the Customer the reasonable cost thereof together with a handling charge equivalent to 15% of the said cost.
6. INSURANCE AND INDEMNITIES
- 6.1 The Contractor shall be responsible for the insurance of the Plant. The Customer and the Contractor shall each maintain an adequate Policy of Insurance to cover their respective liabilities and obligations hereunder and at the request of either party shall furnish a copy of such Policy of Insurance (or evidence of the renewal thereof) to the party requesting the same within forty-eight hours of such a request being made.
- 6.2 The Customer shall indemnify the Contractor against all losses liabilities costs claims or expenses incurred by the contractor (save in respect of any criminal sanctions) as a result of any breach by the Customer of any of its obligations or warranties in the contract.
7. TERMINATION
- 7.1 The Contract shall be for the Contract Period and shall continue thereafter unless terminated by either party serving not less than 2 months written notice of termination to expire not before the end of the Contract Period.
- 7.2 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 4; or
 - (iii) the Customer becomes bankrupt or if a petition is presented for the appointment of an administrator or a receiver or if 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; or
 - (v) The Customer fails within a reasonable time of a request by the Contractor to renegotiate the terms of the Contract so as to implement recommendations reasonably made by the Contractor concerning safety technical or environmental standards or the Contractor's ability economically to perform the Contract in accordance with all applicable statutes by-laws regulations or other legislation affecting the Contract.
- 7.3 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 Services and/or further instruction of the Customer.
8. PAYMENT
- 8.1 The Customer shall make the payments to the Contractor for the Services as specified overleaf. The Customer shall pay the Contractor's invoices within 30 days of their date and shall pay interest (whether before or after judgement) at the rate of 2% above Lloyds TSB plc base rate from time to time from the due date for payment of such sums until actual payment.
- 8.2 The Contractor shall be entitled to increase the Price by giving not less than 2 months notice in writing to the Customer such notice not to take into affect earlier than the end of the Contract Period.
9. CONFIDENTIALITY
- 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 and its employees to assist in the provision of the Services unless that person has signed a confidentiality undertaking in a form approved by the Customer and the Contractor.
10. GENERAL
- 10.1 These Terms and Conditions of contract (including the details overleaf) 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.
- 10.2 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 to prevent including (without limit) conditions of adverse weather, industrial disputes, emergency, inability to obtain supplies or acts of its Sub-Contractors or agents.
- 10.3 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).
- 10.4 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.
- 10.5 The Customer shall not seek to set-off against all or any of the payments due to the Contractor under the Contract any monies or claims otherwise than those directly arising from the Services. The right of the Customer in respect of set-off are fully set out in these Terms and Conditions and no other rights whatsoever shall be implied as terms of the Contract relating to the Customer's set-off.
- 10.6 Neither the Customer nor the Contractor should 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 or affairs of the other or permit any person other than the Contractor and its employees to assist in the provision of the services unless that person has signed a confidentiality undertaking in a form approved by the Customer and the Contractor.
- 10.7 This Contract is personal to the Customer specified herein and may not be assigned delegated or otherwise transferred in whole or in part without the written consent of the Contractor.
- 10.8 Any papers, reports and drawings produced in the process of the contract are for the sole use of the Customer. They must not be used for any purpose detrimental to the interests of the Contractor nor must their contents be disclosed to any third party without the Contractor's written permission. In any event the Contractor shall not be liable to any third party in respect of any work carried out.