

## STANDARD TERMS AND CONDITIONS OF SALES - CONSULTANCY SERVICES

### SUEZ Industrial Water Ltd

#### 1. DEFINITIONS

- 1.1 **"Agreement"** means the letter of engagement or other agreement in writing entered into between the Customer and the Company for the performance of the Services upon the Standard Terms.
- 1.2 **"Company"** means SUEZ Industrial Water Ltd; Company Number 02528695, and whose registered office is SUEZ House, Grenfell Road, Maidenhead, Berkshire, England SL6 1ES.
- 1.3 **"Customer"** means a business or organisation who instructs Company to undertake the Services.
- 1.4 **"Fees"** means the fees and disbursements to be charged by Company to the Customer pursuant to the Agreement in connection with the provision of the Services.
- 1.5 **"Services"** means the services to be provided by Company for the Customer pursuant to the Agreement and any variation thereof agreed in writing from time to time.
- 1.6 **"Standard Terms"** means these standard terms of engagement.

#### 2. COMPANY'S DUTIES

The Company shall perform the Services as set out in the Agreement:

- 2.1 exercising reasonable skill, care and diligence;
- 2.2 in accordance with the Customer's reasonable site rules in so far as these have been made known in writing to the Company prior to the date of the Agreement;
- 2.3 with a strict regard to safety and, in particular, in accordance with all relevant safety legislation.
- 2.4 notwithstanding any other provision of the Agreement, the obligation of the Company shall not exceed that of exercising reasonable skill and care in the performance of the Services.

#### 3. CUSTOMER'S DUTIES

The Customer shall:

- 3.1 co-operate with the Company as the Company reasonably requires;
- 3.2 provide access to the Site at such times as may reasonably be required by the Company for itself and its sub-contractors;
- 3.3 provide free of charge such drawings, data and information as may be available to the Customer and as may reasonably be required by the Company for the performance of the Services;
- 3.4 notify the Company of any known or suspected hazards existing at the Site including, but not limited to, hazardous waste or substances and underground utilities;
- 3.5 in consideration of the performance of the Services, pay the Company's Fees and reimburse costs and disbursements as set out in the Agreement;
- 3.6 provide free of charge to the Company the equipment and facilities as set out in the Agreement;
- 3.7 instruct the Customer's staff and agents to co-operate and assist the Company
- 3.8 The Company may charge the Customer for any additional reasonable costs and expenses incurred by the Company caused by the Customer's instructions, failure to provide instructions, or failure to comply with Clause 3.

#### 4. PERFORMANCE OF THE SERVICES

- 4.1 The Parties shall agree the time and place for performance of the Services, subject to the availability of the Company's staff and agents.
- 4.2 The Company shall use reasonable endeavours to complete the Services by the time scale for the performance of the Services, if any.
- 4.3 Time shall not be of the essence:
  - 4.3.1 for any times for when the Services are to be performed, whether given or agreed to by the Company; or
  - 4.3.2 for the length of time that any of the Services are to take; or
  - 4.3.3 for the time scale for the performance of the Services, if any

#### 5. PAYMENT DETAILS

- 5.1 Payment of the Fee for the Consultancy Services shall be made within 30 days of the date of invoice.
- 5.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Buyer.
- 5.3 If payment of the Fee is not received by any due date, the Seller shall be entitled (without prejudice to any other right or remedy):
  - 5.3.1 to charge interest on the outstanding amount at the rate of 4% per annum above the base lending rate of The Royal Bank of Scotland plc, accruing daily;

- 5.3.2 to require that the Buyer make a payment in advance of any Services or part of the Services not yet made supplied;
- 5.3.3 not to provide any further Services or part of the Services; or
- 5.3.4 not to provide any reports due on completion of the Services until such payment is made.
- 5.4 Interest shall be added to all amounts remaining unpaid after the final date for payment at the rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 All sums mentioned in the Agreement are exclusive of Value Added Tax that will be chargeable in accordance with legislation applicable from time to time.

## 6. CHANGED CONDITIONS

If any event or circumstance beyond the reasonable control of the Company materially affects the extent of the services to be performed by the Company or the manner of or the time required for performance (including, but not limited to, restrictions on entry to the Site, instructions, directions and changed requirements of the Customer, delay by the Customer in providing information or data, requirements of public authorities or other third parties with relevant jurisdiction, changes in the law, changes in conditions, or the discovery of any latent obstructions or hazardous materials) the remuneration of the Company and the time-scale for performance of the Services shall be adjusted to such an extent as is fair and reasonable to take account of such matters and the Agreement shall be modified accordingly. No such adjustments shall be made to the extent that such matters were brought to the attention of the Company in writing prior to the date of the Agreement.

## 7. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

- 7.1 The copyright in all drawings, reports, calculations and other documents provided by the Company pursuant to or in connection with the Services shall remain vested in the Company but, provided all sums due to the Company have been fully paid, the Customer shall have a non-exclusive licence to use the same solely for any purpose for which they were prepared, subject always to the other provisions of the Standard Terms. Save as aforesaid, the Customer shall not make copies of such drawings, reports, calculations or other documents nor use the same for any purpose without the prior written consent of the Company and upon such terms as may be agreed between the Customer and the Company.
- 7.2 The Company may with the consent of the Customer, which consent shall not be unreasonably withheld, publish alone or in Conjunction with any other person any articles, photographs or other illustrations relating to the Services.

## 8. SERVICES PERFORMED FOR CUSTOMER'S BENEFIT

- 8.1 The Company's performance of the Services is solely for the benefit of the Customer and the Customer shall indemnify the Company against any claims from third parties in respect of the Services save to the extent that:
  - 8.1.1 the Company has, without being requested to do so by the Customer, furnished information or advice direct to such third parties; or
  - 8.1.2 the Company has, in writing, unconditionally authorised disclosure of information or advice to such third parties.

## 9. PROFESSIONAL INDEMNITY INSURANCE

The Company shall maintain professional indemnity insurance to support its liabilities under the Agreement with the indemnity amount being on an each-and-every-claim basis for a period of six years from the date of the Agreement, provided that in respect of claims for pollution and/or contamination risks such indemnity amount is on an aggregate basis, and provided always that such insurance continues to be available at commercially reasonable rates and terms in the London (UK) insurance market. As and when reasonably requested to do so, the Company shall produce for inspection documentary evidence of such insurance in the form of a certificate from its insurance broker. The indemnity insurance under this clause shall be limited to a maximum aggregate amount of £2,000,000.00 in respect of all and any claims arising during the aforesaid period.

## 10. WARRANTIES, LIABILITY AND INDEMNITIES

- 10.1 The Company warrants that it will use reasonable care and skill in performing the Services.
- 10.2 If any part of the Consultancy Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Customer (if the request is given within 6 months of the time scale for performance of the Services), the Company will re-perform the relevant part of the Services, always subject to Clause 10.4 and Clause 10.5 below.
- 10.3 The Company expressly does not warrant that any result or objective whether stated in this Agreement or not shall be achieved, be achievable or be attained at all or by a given time scale for the performance of the Services or any other date.
- 10.4 Except in the case of death or personal injury caused by the Company's negligence, the Company's liability under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the Fees paid to the Company under this Agreement. The provisions of this Clause 10.4 shall not apply to Clause 10.6.
- 10.5 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this Clause 10.5 shall not apply to Clause 10.6.
- 10.6 The Customer shall indemnify and hold harmless the Company from and against all Claims and Losses arising from loss, damage, liability, injury to the Company employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Customer by the Company, its employees or Company's, or supplied to the Company by the Customer within or without the scope of this Agreement. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.
- 10.7 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.
- 10.8 To the extent permitted by law the Company shall in no event be liable to the Customer for any loss of business, loss of opportunity, or loss of profits or any form of indirect or consequential loss arising in relation to the Products and Services provided by the Company.

- 10.9 Nothing in the Agreement shall exclude or limit the Company's liability for death or personal injury resulting from the negligence of the Company's agents, employees or sub Agreementors.

#### 11. ACCURACY OF INFORMATION

The Company shall be entitled to rely on the accuracy of drawings, data, information and statements given or made by the Customer's employees and agents and by any third parties through the Customer. The Company shall have no liability for any reports or advice that it may give to the extent that these are based on any such drawings, data, information or statements which prove to be inaccurate.

#### 12. MATTERS OF LEGAL SIGNIFICANCE

The Company makes no representation whatsoever concerning the legal significance of its findings or as to other legal matters touched on in any reports or advice given by it including, but not limited to, questions of ownership of property or the application of any law to matters dealt with in any such reports or advice.

#### 13. CONSEQUENTIAL LOSS

The Company shall not be liable for any indirect, special or consequential loss or damage whatsoever suffered or allegedly suffered by the Customer (including, but not limited to, loss of profits or interruption of business, loss of revenue, loss of use, loss of production, loss of bus mess. loss of business opportunity or loss of goodwill) arising out of or in connection with the Agreement, whether or not the possibility of such loss or damage was known or foreseeable.

#### 14. SUB-CONTRACTING

- 14.1 The Company shall be entitled to sub-contract any of the Services.
- 14.2 If the Company recommends that the Customer should engage other consultants or contractors, the Company shall have no liability in respect of or arising out of their engagement.

#### 15. ASSIGNMENT

- 15.1 Neither party may assign its interest in the Agreement or any rights under or arising out of or in connection with the Agreement without the prior written consent of the other party.

#### 16. SUSPENSION

- 16.1 The Customer may at any time by giving not less than 30 days notice to the Company require the Company to suspend performance of the Services. Unless otherwise agreed, and subject always to the provisions of Clause 17, the Customer shall give the Company not less than 14 days notice of its desire to have the Company resume performance of the Services.
- 16.2 If the Customer is in breach of any of its obligations under the Agreement and such breach remains unremedied for 14 days after notice thereof has been given to the Customer, the Company may forthwith suspend the performance of the Services until 14 days after such time as the breach is remedied.
- 16.3 In the event of any suspension of the Services the remuneration of the Company and the time-scale for performance of the Services shall be adjusted to such extent as is fair and reasonable to take account of the disruption caused by the suspension, and the Agreement shall be modified accordingly.

#### 17. TERMINATION

- 17.1 The Customer may at any time by giving not less than 30 days notice in writing to the Company terminate the Company's engagement.
- 17.2 Either party may terminate the Company's engagement forthwith by notice in writing to the other in the event of a material breach by the other of its obligations under the Agreement which is irremediable or, where remediable, which the other shall have failed to remedy within 14 days after receiving notice specifying the breach and requiring its remedy.
- 17.3 Either party may terminate the Company's engagement forthwith by notice in writing to the other if the other ceases to trade or enters into liquidation whether voluntarily or compulsorily (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver, administrative receiver, administrator, nominee, supervisor or similar officer appointed over all or any of its assets or its undertaking or any part thereof or if any action, petition, application or proceeding is initiated or resolution passed relating to any of the aforementioned matters.
- 17.4 If any suspension of the Services lasts for one month or more, the Company shall be entitled to terminate its engagement forthwith by notice in writing to the Customer.
- 17.5 Any termination of the Company's engagement shall not prejudice or affect any rights or remedies accrued prior to or in consequence of the termination.
- 17.6 On any termination of the Company's engagement, the Company shall be entitled to payment for all services performed and costs incurred up to the date of termination on the basis of the Fees set out in the Agreement and for taking such steps as reasonably necessary to bring to an end the Services.
- 17.7 Save where termination arises because of the Company's default or insolvency (or similar grounds referred to in Clause 17.17.3), the Company shall, in addition to payment pursuant to Clause 17, be entitled to reasonable compensation for the termination of its engagement.

#### 18. CONFIDENTIALITY

- 18.1 Each Party ("**Receiving Party**") shall keep the Confidential Information of the other Party ("**Supplying Party**") confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the Confidential Information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Clause 18, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

- 18.2 The obligations of Clause 18 shall not apply to any information which:
- 18.2.1 was known by or in the possession of the Receiving Party before it was provided to the Receiving Party by the Providing Party;
  - 18.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
  - 18.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
  - 18.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of, the Confidential Information supplied by the Supplying Party; or
  - 18.2.5 is required to be disclosed by order of a court of competent jurisdiction.
- 18.3 The Parties acknowledge that irreparable injury may result in the event of any use or disclosure by a Party of Confidential Information of the other in violation of the Agreement and that if any Party should make, or attempt to make, any such use or disclosure, the other Party shall be entitled, in addition to such other remedies, damages and relief as may be available under applicable law, to an injunction prohibiting such use or disclosure or specifically enforcing the provisions hereof, as the case may be. The Parties further agree that in the event that a Party or any of its employees (including former employees) have used or disclosed Confidential Information in violation of the Agreement, such Party will pay and reimburse the other Party for any and all direct, consequential or incidental loss, damage, cost or expense resulting from or arising out of any such use or disclosure (including, without limitation, economic loss relating to the loss of the confidentiality of such Confidential Information, lost profits, benefits gained by the breaching Party through such use or disclosure, costs of remedying such violation and/or mitigating the damage therefrom, costs of redeveloping, redesigning, reengineering and/or otherwise replacing the Confidential Information and costs of preventing additional disclosure), together with all reasonable legal fees and other legal expenses (including, without limitation, investigation expenses, expert witness fees and other professional fees or expenses) incurred by the other Party in connection with the enforcement of its rights hereunder. The Parties agree that nothing in the Agreement shall be construed to limit or supersede the common law of torts or statutory or other protection of trade secrets where such law provides the Parties with greater protections or protections for a longer duration than that herein.
- 18.4 This Clause 18 shall survive termination of this Agreement for a period of 10 years.

## 19. DISPUTES

- 19.1 If any question, dispute or difference ("Matter in Dispute") shall arise between the Company and the Customer in relation to the Agreement which cannot be settled by agreement between the parties, within 30 days of both parties being aware of the Matter in Dispute, either Party may as soon as reasonably practicable give to the other notice of the Matter in Dispute specifying its nature and specifying the steps that the Party giving the notice considers need to be taken to resolve the Matter in Dispute.
- 19.2 If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution (CEDR).
- 19.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure, or if either Party will not participate in an ADR procedure, the dispute shall be referred to a single arbitrator to be appointed jointly by the parties or in the event of dispute as to such appointment to be appointed by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.
- 19.4 If and to the extent that the Housing Grants, Construction and Regeneration Act 1996 applies to this Order then the rules for adjudication set out by CEDR (Centre for Dispute Resolution) shall apply.

## 20. SOLICITING OF EMPLOYEES

- 20.1 Neither party shall solicit for employment or hire the employees of the other party involved in the management or performance of the Services at any time after the date of the Agreement until the expiry of one year after the completion of the Services or one year after the earlier termination of the Company's engagement.
- 20.2 The parties acknowledge that irreparable injury may result in the event of any breach of clause 19.1 above, and the injured party shall be entitled, in addition to such other remedies, damages and relief as may be available under applicable law, to an injunction specifically enforcing the provisions hereof.
- 20.3 The parties further agree that the defaulting party will pay and reimburse the injured party for any and all direct, consequential or incidental loss, damage, cost or expense resulting from or arising out of any such default (including but not limited to economic loss relating to loss of revenue, loss of contracts, loss of anticipated business and loss of profits, and the benefits gained by the defaulting party through such breach, costs of remedying such violation and/or mitigating the damage therefrom), together with all reasonable legal fees and other litigation expenses (including, without limitation, investigation expenses, expert witness fees and other professional fees or expenses) incurred by the injured party in connection with the enforcement of its rights hereunder.
- 20.4 The parties agree that nothing in this Agreement shall be construed to limit or supersede the common law of torts or statutory or other protection of trade secrets where such law provides the parties with greater protections or protections for a longer duration than that herein.

## 21. FORCE MAJEURE

- 21.1 The Company shall not be in breach of the Agreement if events beyond its reasonable control prevent it from performing its obligations under this the Agreement. If circumstances or events beyond reasonable control prevent the proper performance of the affected Party's obligations for more than 90 days, then the Company may immediately terminate this Agreement by giving written notice to the Customer.
- 21.2 If the Company is unable to perform its obligations fully it must notify the other Party in writing of the extent to which it is unable to perform. The Company's obligations to perform will be suspended for the duration of the delay arising from the force majeure. It is agreed that the parties must use all reasonable efforts to overcome difficulties arising, and resume as soon as reasonably possible the normal schedule of work.

## 22. SEVERABILITY

If any provisions of the Agreement are held to be invalid, unenforceable or illegal such provision shall be severed and the remaining provisions herein shall continue in full force and effect.

## 23. ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations under these Terms and Conditions or the Proposal.

**24. WAIVER**

Failure by the Company to enforce any of the terms and conditions herein shall not amount to a waiver of the terms or a waiver of the right at any subsequent time to enforce all the Terms and Conditions and the Proposal.

**25. NOTICES**

- 25.1 Any notice or other communications required to be given under the Agreement shall be in writing and shall be delivered either by recorded delivery or by fax to the Party required to receive the notice to the address and person as set out in the Agreement.
- 25.2 Any notice sent by way of recorded delivery shall be deemed to have been received on the second day after posting.
- 25.3 Any notice sent by way of facsimile shall be deemed to have been received on the date of transmission if transmitted before 4 pm on a Business Day, or the next Business Day if transmitted otherwise. A notice sent by facsimile should always be also be sent in hardcopy by post.

**26. RIGHTS OF THIRD PARTIES**

A person who is not a Party to the Agreement shall not have any rights under or in connection with by virtue of the Contracts (Rights of Third Parties) Act 1999.

**27. GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.