

Version 1 dated 6/12/22

**TERMS AND CONDITIONS
FOR THE PURCHASE OF GOODS AND SERVICES
1 DEFINITIONS AND INTERPRETATION**

1.1 In this Contract:

"Applicable Laws" means all applicable laws, bylaws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

"Conditions" means the terms and conditions set out in this document.

"Contract" means the agreement between ESL and Supplier for the purchase of goods or services by ESL in accordance with these Conditions and any Order.

"Good Industry Practice" means the exercise of the degree of skill, care and diligence expected from an expert and experienced supplier of goods and/or services the same as or similar to the Goods and/or Services.

"Goods" means the goods (including any instalment of the goods or any parts for them) which are set out in the Order.

"Malpractice" includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

"New Materials" means any materials, patterns, templates, drawings, know-how, techniques and information that the Supplier or its Representatives create for ESL under a Contract.

"Order" is an order for Goods and/or Services placed with the Supplier by ESL.

"ESL" means Estuary Services Ltd of London River House, Royal Pier Road, Gravesend, Kent DA12 2BG.

"ESL Materials" means any materials, patterns, templates, drawings, know-how, techniques and information provided by ESL to the Supplier in connection with a Contract.

"ESL Policies and Regulations" means all relevant ESL policies, rules and regulations, including, but not limited to whistleblowing policy, drugs and alcohol policy and modern slavery policy

"ESL Representative" means a representative nominated in an Order or from time to time by ESL.

"Premises" means the premises at which any Services are carried out as specified in an Order.

"Representatives" means, as applicable, the Supplier or a member of the Supplier's group or the ESL or any of their directors, officers, employees, agents, professional advisors, suppliers or contractors.

"Services" means the services described in the Order and includes Engineering Services, where applicable.

"Supplier" means the supplier named in the Order.

"Supplier Materials" means any materials, patterns, templates, drawings, know-how, techniques and information of the Supplier that the Supplier or its Representatives do not create for ESL under the Contract.

"Supplier Personnel" means the employees, agents, subcontractors or invitees of the Supplier from time to time.

"VAT" means value added tax or any similar or substituted turnover or sales tax in the United Kingdom or elsewhere.

1.2 In these Conditions and any Contract:

(a) the interpretation of general words shall not be restricted by words indicating a particular class or particular examples;

(b) any reference to a statute or statutory provision includes a reference to any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time; and

(c) unless otherwise stated, time shall not be of the essence for the performance of any obligation.

2 FORMATION OF A CONTRACT

2.1 An Order is an offer by ESL to purchase the Goods and/or Services subject to these Conditions. Acceptance of an Order by the Supplier constitutes unconditional acceptance of these Conditions.

2.2 These Conditions shall govern and be incorporated into every Order unless clearly stated otherwise on the Order.

2.3 The Supplier's performance of any Order will amount to its acceptance of these Conditions, regardless of whether or not it has given a formal acceptance of an Order.

2.4 These Conditions shall apply to the Contract to the exclusion of, and shall prevail over, any other terms and conditions contained in or referred to in any documentation submitted by the Supplier, or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing.

3 CANCELLATION

ESL may cancel any Order, in whole or in part, by giving written notice to the Supplier at any time prior to delivery of the Goods or the commencement of the provision of the Services.

4 CHARGES AND PAYMENT

4.1 The charges payable for the Goods and/or Services shall be the prices stated in the Order (the **"Charges"**).

4.2 Unless otherwise stated:

(a) the Charges (together with any applicable VAT) are the only amounts payable by ESL under a Contract;

(b) the Charges shall be exclusive of any applicable VAT (which shall be payable by ESL subject to receipt of a valid VAT invoice) and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address specified by ESL and any duties, custom or levies, other than VAT.

4.3 No increase in the charges for the Goods and/or Services may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of ESL.

4.4 The Supplier shall invoice ESL in pounds sterling in arrears on or after delivery of the Goods and/or completion of the Services.

4.5 ESL shall only be obliged to make payments which are supported by accurate invoices and where ESL is satisfied that the Goods are of satisfactory quality and fit for purpose and/or the Services have been carried out to the standard requested or required by ESL.

4.6 Unless the subject of a genuine dispute or otherwise stated in the Order and subject to Clause 4.5, ESL shall pay the charges within 30 days of receipt of an accurate and valid VAT invoice.

Clauses 5 to 7 shall apply to Contracts in respect of the supply of Goods only.

5 DELIVERY

5.1 The Supplier shall deliver the Goods, properly packed and secured at its own risk, on the date or between the dates (as applicable) specified in the Order. Delivery of the Goods shall take place at such location as ESL may specify in the Order or such other address as may be agreed between the parties in writing.

5.2 The Supplier shall notify ESL immediately after receipt of an Order if the delivery dates for the Goods cannot be met.

5.3 If the Supplier is unable for any reason to fulfil any delivery of the Goods on the date or between the dates (as applicable) specified in the Order, ESL may cancel the Order or parts thereof without liability to the Supplier.

5.4 A packing note quoting the Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.

5.5 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and is not severable.

5.6 The Goods shall:

(a) be free from defects in materials and workmanship, be of satisfactory quality and conform to and in all respects with the specifications as set out in the order; and

(b) comply with all Applicable Laws, regulations and standards; and

(c) not be the subject of any security interest, lien, encumbrance, charge or adverse title.

5.7 ESL may reject any Goods which do not comply with Clause 5.6.

5.8 Acceptance (in whole or in part) shall not be deemed to have taken place until ESL has had a reasonable time to inspect the Goods following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Any inspection or testing of the Goods by ESL shall not prejudice ESL's right to reject defective Goods at a later date and make a claim in respect of them.

6 TITLE AND RISK

Risk in the Goods shall pass to ESL once they are delivered to ESL specified location.

Title in the Goods shall pass to ESL on delivery, unless payment for the Goods is made prior to delivery upon which it shall pass to ESL once made.

7 INSTALLATION AND COMMISSIONING

7.1 If required in the Order, the Supplier will install and commission the Goods at no additional cost by the date in the Order and such installation and commissioning will be regarded as Services

7.2 ESL will issue a written acceptance when it is satisfied the successful installation and commissioning of the Goods has taken place and when the Supplier has provided ESL all documents needed to operate and maintain the Goods.

7.3 If Goods are not installed by the Supplier, the Supplier will (on or before delivery) provide ESL with all documents needed to install, operate and maintain the Goods.

7.4 Where reasonably practicable (or required in an Order) the Supplier will on the later of delivery of the Goods or Technical Handover, transfer any manufacturer's warranty in relation to the Goods to ESL.

Clauses 8 to 11 shall apply to Contracts in respect of the provision of Services only.

8 PERFORMANCE OF THE SERVICES

8.1 The Supplier shall carry out the Services within the time period specified in the Order. The time that the Services are to be carried out or delivered shall be agreed by the ESL Representative in advance and, subject to any other conditions the ESL Representative may impose at its sole discretion, shall not be undertaken outside the normal working hours (excluding public holidays) of 9.00am to 5.00pm Monday to Friday inclusive.

8.2 The Supplier shall notify the ESL Representative when the Services are completed or fully delivered.

8.3 The Supplier shall:

(a) provide any Services in line with Good Industry Practice;

(b) at its own expense, promptly supply everything necessary for the performance of its obligations under the Contract and leave the Premises as clean, tidy and safe as it was when it entered.

(c) participate in regular reviews of its performance;

(d) provide the Goods and Services in line with any service levels set out in the Contract ("**Service Levels**");

(e) provide ESL with a regular report (with such supporting documents as are reasonably required); and

(f) where any regular report indicates a persistent failure by it to meet any Service Levels, meet with ESL to explain the reasons for such failure and its proposal for ensuring future compliance.

8.4 Any materials used or supplied by Supplier in the performance of the Services shall be in accordance with the requirement of any European Union and/or British Standard specifications and or regulations.

8.5 When working on ESL's Premises the Supplier shall ensure that all equipment, working conditions and methods are safe and without risks to health for any personnel in compliance with ESL Policies and Regulations.

8.6 The Supplier shall:

(a) ensure that any Services are carried out in such a way as to prevent so far as reasonably possible damage or pollution to the environment;

(b) keep any waste, surplus, condemned (or otherwise unusable) and recyclable materials and rubbish arising from the Services securely and safely on the Premises until cleared away in accordance with Applicable Laws and/or ESL's reasonable instructions;

(c) ensure that any removal of waste is only carried by registered, authorised and licensed carriers

(d) keep a record of the carrier's registration, authorisation or licence and of the carrier's written confirmation of the disposal site used.

9 ESL REPRESENTATIVE

9.1 No order, instruction or drawing issued or given by the ESL Representative in connection with carrying out the Services shall entitle the Supplier to make any claim against ESL for extra payment unless the ESL Representative shall have agreed the cost with the Supplier and have given confirmation in writing authorising the extra payment prior to any expense being incurred.

9.2 The whole or any part of the Services which may be found to be defective or manufactured with inferior materials or which fail to pass any appropriate tests on completion (such tests to be paid for by the Supplier), or which are not in accordance with the Contract requirements, may be rejected by the ESL Representative. The Supplier shall, up to a period of 12 months after completion of the Services, if and when so ordered in writing by the ESL Representative, rectify any defects in the Services or in materials manufactured.

9.3 Should the Supplier fail to adhere to the conditions in Clause 9.2 within a reasonable time frame as requested, the ESL representative may, after written notice to the Supplier of such failure, do, at the cost of the Supplier, anything which the Supplier has failed to do to complete the requirements of the Order.

10 SUPPLIER EQUIPMENT

10.1 The Supplier shall provide all the equipment necessary for the provision of the Services.

10.2 The Supplier shall maintain all items of its equipment within the Premises in a safe, serviceable and clean condition.

10.3 All equipment provided by the Supplier shall be at the risk of the Supplier and ESL shall have no liability for any loss of or damage to such equipment unless the Supplier is able to demonstrate that such loss or damage was caused by the negligence or wilful default of ESL.

11 SUPPLIER'S EMPLOYEES

NOT USED

The following clauses apply to Contracts in respect of both the provision of Goods and Services.

12 INTELLECTUAL PROPERTY

NOT USED

13 DATA PROTECTION

"Personal Data" has the meaning given under the Data Protection Laws.

"Data" means all Personal Data and other data collected, generated or otherwise processed by one party as a result of, or in connection with, the Contract.

"Data Protection Laws" means any data protection laws and regulations applicable in the United Kingdom from time to time and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body.

13.1 If, during the term, either party processes Data on behalf of the other party, the provisions of this Clause 13 shall apply.

13.2 Each party shall comply with the requirements of the Data Protection Laws in respect of the activities which are the subject of the Contract and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other of the Data Protection Laws.

13.3 Each party shall only process the Data to the extent necessary to perform its obligations under the Contract and shall have in place, and shall maintain, appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss or destruction of, or damage to, the Data.

14 CONFIDENTIALITY

14.1 **"Confidential Information"** means all information of a confidential nature in the disclosing party's possession or control, whether created before or after the date of the Contract, whatever its format, and whether or not marked "confidential", including the terms of the Contract, and negotiations relating to them, but shall not include any information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party's possession or comes into the other party's possession without breach of any third party's confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.

14.2 Each party shall safeguard the other party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Contract.

14.3 Nothing in the Contract shall be construed so as to prevent one party from disclosing the other's Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first party promptly notifies the other party in advance and discloses only that part of the other party's Confidential Information that it is compelled to disclose.

14.4 Each party shall tell the other immediately if it discovers that this Clause 14 has been breached and shall, on request, return to the other all of the other party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

14.5 The obligations in this Clause 14 shall continue without limit in time.

15 WARRANTIES

15.1 Each party represents and warrants that:

- (a) it has the power and authority to enter into and perform the Contract, which constitute valid and binding obligations on it in accordance with their terms; and
- (b) in performing its obligations under the Contract it shall comply with all Applicable Laws.

16 INDEMNITIES

The Supplier shall indemnify ESL from and against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by ESL, its employees, officers, agents and contractors as a result of or in connection with:

- (a) any damage to property or injury to persons resulting from the supply of Goods or provisions of Services;
- (b) any claim by any third party resulting from the negligence of or breach by or fraud on behalf of the Supplier; or
- (c) any claim, demand or action alleging that the provision and/or use of the Goods or Services has infringed any intellectual property rights of a third party.

17 CAPS ON LIABILITY

17.1 Subject to Clauses 17.2 and 17.3, the liability of each party under or in connection with a Contract is limited to:

- (a) for liability arising from loss of or damage to property, £10,000,000 per occurrence; and
- (b) for all other liabilities, the higher of:
 - (i) £100,000; or
 - (ii) 150% of the total amounts paid and which would be payable under the Contract.

17.2 Neither party will be liable for any indirect or consequential loss.

17.3 The exclusions and limitation of liability set out in Clauses 17.1 and 17.2 do not apply to:

- (a) liability arising from death or injury to persons;
- (b) any breach of Clause 13 or Clause 14;
- (c) any indemnity; or
- (d) anything else which cannot be excluded or limited at law, to which no limit applies.

18 INSURANCE

18.1 Without prejudice to Clause 16 the Supplier shall maintain in force at its own expense:

- (a) employer's liability insurance for the minimum amount of £1 million;
- (b) public and product liability insurance for the minimum amount of £2 million per occurrence and in the annual aggregate;
- (d) any other insurances required by Applicable Law or by ESL.

18.2 Within 14 days of a request by ESL, the Supplier shall provide evidence of the policies referred to in Clause 18.1.

19 TERM AND TERMINATION

19.1 A Contract commences on the date of the acceptance of the Order and continues until the Goods have been delivered or the Services have been completed in accordance with the Contract, on which date the Contract will terminate.

19.2 A Contract may be terminated immediately by notice in writing:

- (a) by either party if the other party is in material or continuing breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) for a period of ten working days after written notice by the other party;
- (b) by either party with immediate effect from the date of service on the other party of written notice if:
 - (i) such other party becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);
 - (ii) such other party ceases or threatens to cease to carry on the whole or a substantial part of its business;
 - (iii) any distress or execution shall be levied upon such other party's property or assets, or any of its property is subject to the exercise of commercial rent arrears recovery;
 - (iv) such other party shall make or offer to make any voluntary arrangement or composition with its creditors;
 - (v) any resolution to wind up such other party (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other party shall be presented [and not withdrawn or dismissed within seven days] or an order is made for the winding up of such other party;
 - (vi) such other party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it;
 - (vii) a receiver or administrative receiver is appointed over all or any of such other party's undertaking property or assets;
 - (viii) any bankruptcy petition is presented or a bankruptcy order is made against such other party;
 - (ix) an application is made for a debt relief order, or a debt relief order is made in relation to ESL; or
 - (x) such other party is dissolved or otherwise ceases to exist.

19.3 Termination shall not affect either of the parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

20 FORCE MAJEURE AND EXCLUDED EVENTS

"Force Majeure Event" means an event or circumstance beyond the reasonable control of a party which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action (other than strikes and other industrial action of the Supplier Personnel), sabotage or riots, and floods, fires, explosions or other catastrophes.

20.1 Neither party shall be liable for any breach of the Contract, and the ESL shall not be liable for any failure or delay in providing the Services, arising directly or indirectly as a result of a Force Majeure Event.

21 FRAUD, BRIBERY AND CORRUPTION

21.1 Each party shall notify the other immediately if it becomes aware of or has grounds for suspecting any fraud or Malpractice relating to the supply of Goods or Services.

21.2 Without prejudice to any other remedy it may have, if either party has reasonable grounds for believing that any of the other party's personnel has committed a fraud or Malpractice relating to the supply of Goods or Service, that party may, in its absolute discretion:

- (a) suspend the supply of the Goods or Services; and/or
- (b) withhold payment of any Charges falling due. Payment of the Charges and supply of the Goods or Services shall be resumed if it is established that the other party's personnel were not responsible for any fraud or Malpractice.

22 GENERAL

22.1 The Supplier shall not, without the written consent of ESL assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under these Conditions or under any Contract or any interest in them.

22.2 The Supplier may not subcontract any of its rights or obligations (or both) under these Conditions or under any Contract without the prior written consent of ESL. The Supplier shall remain responsible for all obligations that are performed by the Supplier Personnel as if they were acts or omissions of the Supplier.

22.3 Nothing in these Conditions or any Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

22.4 Any ESL Materials shall not be used by the Supplier or Supplier Personnel for any purpose whatsoever other than for the performance of the Contract and are to be returned carriage paid, carefully packed. All ESL Materials whilst in the Supplier's possession are at its risk and must be insured by it against loss or damage.

22.5 The parties do not intend any third party to have the right to enforce any provision of these Conditions or of any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22.6 No variation of these Conditions or of any Order or Contract shall be effective unless it is in writing and signed by or on behalf of each party.

22.7 The rights and remedies expressly conferred by these Conditions or by any Contract are cumulative and additional to any other rights or remedies a party may have.

22.8 Communications under the Contract shall be in writing and delivered by hand, sent by recorded delivery post or by email to the relevant party at its address or email address (as applicable). Without evidence of earlier receipt, communications are deemed received: if delivered by hand, at the time of delivery; if sent by recorded delivery, at 9.00 am on the second business day after posting; if sent by email, at the earlier of (i) the time the recipient acknowledges receipt and (ii) 24 hours after transmission, unless the sender receives notification that the email has not been successfully delivered. In the case of post it shall be sufficient to prove that the communication was properly addressed and posted or transmitted.

22.9 If any dispute arises under or in connection with this Contract, the parties agree to enter into mediation to endeavour to settle such a dispute. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings in the English courts, in accordance with Clause 22.10, below.

22.10 Each Contract and any non-contractual obligations arising in connection with it is governed by and construed in accordance with English law, and the English courts have exclusive jurisdiction to determine any dispute arising in connection with them, including disputes relating to any non-contractual obligations.

22.11 Where the Services to be provided under the Contract are Construction Operations, notwithstanding the provisions of Clause 15.10, any dispute arising under the terms of the Contract at any time may be referred by either party to adjudication in accordance with the procedure set out in the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011(SI2011/2333).