

W J HATT LIMITED TERMS OF BUSINESS

1. INTERPRETATION

1.1 In these Terms unless the context otherwise requires, the following definitions and rules of interpretation apply in these Terms:

1.2 Definitions

"Client" the person, firm, company or other organisation or entity which is the Company's client in respect of the Works;

"Commencement Date" has the meaning given in clause 2.4.

The "Company" is W.J. Hatt Limited a company registered in England and Wales with company number 00328277.

"Contract" means the contract between the Company and the Client for the supply of Goods and/or Services in accordance with these Terms.

"Goods" means the goods (or any part of them) as set out in the Proposal.

"Order" means the Client's order for Works.

"Payment" means the fees payable by the Client for the supply of the Works in accordance with clause 5 (Charges and Payment).

"Personal Data" has the meaning set out in the General Data Protection Regulation and relates only to personal data, or any such part of personal data.

"Plant" means all or any plant or machinery hired by or owned by the Company and delivered to the Client's premises for the purposes of the Works.

"Proposal" means the estimate of costs and specification dated [DATE] supplied by the Company to the Client in connection with the Works.

"Services" means the services supplied by the Company to the Client either on a Call-Out or as set out in the Proposal.

"Terms" means these terms and conditions of business as amended from time to time by the Company.

"Works" means any Goods and/or Services supplied by the Company to the Client either on a Call-Out or as set out in the Proposal.

1.2.1 references to the singular shall include the plural and vice versa;

1.2.2 headings are inserted for convenience only and no account shall be taken of headings in construing these Terms;

1.2.3 a reference to writing or written includes email.

1.3 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in all respects in accordance with the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of it or in connection with the Contract or its subject matter or formation.

2. BASIS OF CONTRACT

2.1 The Company reserves the right to refuse or decline to carry out any Works at its own discretion.

2.2 Where there is a request for a Call-Out, the Company shall not be under any obligation to provide an estimate to the Client. The request for a Call-Out by the Client constitutes an offer by the Client for the Company to carry out Works in accordance with these Terms. The Offer shall be accepted when the Company agrees to perform the Works in accordance with the Proposal.

2.3 Where the Works are not a Call-Out, the Order constitutes an offer by the Client to purchase Works in accordance with these Terms.

2.4 Subject to clause 2.2, the Company shall issue a Proposal to the Client in respect of the Client's Order and the Order shall only be deemed to be accepted when the Company agrees to perform the Works in accordance with the Proposal at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.5 Where a Proposal has been supplied to the Client, the Company reserves the right to revise the Proposal if:

2.5.1 it materialises that further Works need to be carried out which were not anticipated when the Proposal was issued;

2.5.2 the Client instructs the Company to supply any further Works that have not been set out in the Proposal.

2.6 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Works described in them. They shall not form part of the Contract or have any contractual force.

2.7 These Terms will apply to all Contracts for Works between the Company and the Client and for the avoidance of doubt shall prevail over any terms and conditions stipulated by the Client. Where the Client or its agents provides its own contract or terms and conditions it is acknowledged by the Client that that contract will not bind the parties except where it is drawn to the attention of the Company prior to a quote being accepted and the Company confirms in writing that it will be bound by that contract. Each of the parties acknowledges that it is not relying on any warranty, representation or undertaking by the other party or any of its officers, servants or agents other than as contained herein.

2.8 No amendments to these Terms shall be effective unless expressly agreed in writing and signed by an authorised representative on behalf of the Company.

2.9 No Works will commence until the Company is in receipt of written confirmation from the Client or on the instruction of an authorised representative of the Company at the site except in respect of the circumstances envisaged in Clause 2.2 of this Contract.

2.10 No property or title to Plant shall pass to the Client.

3. PROVISION OF WORKS

3.1 The Company shall supply the Works to the Client in accordance with the Proposal in all material respects.

3.2 The Company shall use all reasonable endeavours to meet any performance dates as agreed with the Client in writing but any such dates shall be estimates only and time shall not be of the essence for performance of the Works.

3.3 The Company reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Works and the Company shall notify the Client in any such event.

3.4 The Company warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Company shall, at its option, repair or replace the defective Goods if:

3.5.1 the Client gives notice in writing during a period of three (3) months within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.4;

3.5.2 the Company is given a reasonable opportunity of examining such Goods; and

3.5.3 the Client shall co-operate with the Company should the Company need to collect any defective Goods from the Client's premises.

3.5.4 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 3.4 if:

- 3.5.4.1 the Client makes any further use of such Goods after giving notice in accordance with clause 3.5;
- 3.5.4.2 the defect arises because the Client failed to follow the Company's or the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 3.5.4.3 the defect arises as a result of the Company following any drawing, design or Goods specification supplied by the Client;
- 3.5.4.4 the Client alters or repairs such Goods without the written consent of the Company;
- 3.5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or
- 3.5.4.6 the Goods differ from their description or as a result of the changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.5.4.7 Except as provided in clauses 3.5.1 to 3.5.3, the Company shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 3.4.
- 3.6 These Terms shall apply to any repaired or replacement Goods supplied by the Company.
- 4. **CLIENT RESPONSIBILITIES**
- 4.1 Before commencement of the Works the Client shall, at its own cost, ensure that:
 - 4.1.1 arrangements are made with the relevant service company(ies) for the type and grade of material specified in the proposal for the service to be laid;
 - 4.1.2 written approval is received from the local water company of the type and grade of material specified in the Proposal and for the pipe(s) to be laid;
 - 4.1.3 any necessary wayleaves are granted and/or any required legal permission(s) in place;
 - 4.1.4 the terms of the Order and any information it provides are complete and accurate;
 - 4.1.5 it co-operates with the Company in all matters relating to the Works;
 - 4.1.6 it provides the Company, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as the case may be as reasonably required by the Company;
 - 4.1.7 it provides the Company with such information and materials as the Company may reasonably require in order to supply the Works, and ensure that such information is complete and accurate in all material respects;
 - 4.1.8 it obtains and maintain all necessary licences, permissions and consents which may be required for the Works before the date on which the Works are to start;
 - 4.1.9 it complies with all applicable laws, including health and safety laws;
 - 4.1.10 it keeps all materials, equipment, documents and other property of the Company (**Company Materials**) at the Client's premises in safe custody and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
 - 4.1.11 it complies with any additional obligations as set out in the Proposal.
- 4.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
 - 4.2.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Works until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Company's performance of any of its obligations;
 - 4.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4; and
 - 4.2.3 the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.
- 4.3 The Client shall notify the Company of the exact location and nature of any electricity, gas or water mains, drains or other underground services prior to commencement of the Works.
- 4.4 The Company reserves the right to terminate the contract forthwith if in its opinion any of the conditions contained in this clause 4 have not been satisfied prior to the commencement of the Works.
- 5. **CHARGES AND PAYMENT**
- 5.1 Value added tax and any other taxes, levies or duties shall, where applicable be charged on all fees and other amounts payable by the Client to the Company.
- 5.2 The charges set out in the Proposal shall be increased on a time and materials basis by any additional costs (including, but without limitation, any increased labour costs and/or increased costs incurred including any cancellation charges, in respect of services or materials) necessarily incurred by the Company resulting from:
 - 5.2.1 changes made to the Proposal by the Client;
 - 5.2.2 any increase in the cost of labour, transport, materials and/or services which may occur after the date of the Proposal but prior to the commencement of the Works;
 - 5.2.3 failure by the Client to provide information or facilities at the time(s) and/or place(s) and/or in the manner agreed between the Client and the Company and as detailed in the Proposal or set out in these Terms.
- 5.3 If conditions at the site are found to vary materially from those detailed in the Proposal or the ground is found to be unsuitable for machine work the Company shall be entitled to revise the charges set out in the Proposal or terminate the contract in accordance with Clause 9.1.1.
- 5.4 If the Company is prevented or delayed from carrying out the Works by reason of any act or omission of the Client, the Client will be charged an amount based on the Company's waiting time rate from time to time. The Company shall nevertheless be entitled to render any invoices to the Client on the dates or at the times when they would otherwise have been rendered but for such delay and such invoices shall be payable by the Client in accordance with Clause 5.7.
- 5.5 The charges set out in the Proposal are based on the assumption that the Company will be required to carry out the whole of the Works. Any reduction in the quantity of the Works will not necessarily relate to a reduction in the cost of the Works.
- 5.6 Any additional Work(s), outside of the scope of the Proposal, will be charged at the price prevailing at the date of instruction.
- 5.7 It is the Company's normal practice to render invoices on a monthly basis or on the completion of the Works, whichever is the earlier. The company shall also render invoices in respect of materials on delivery to the site of such materials. Unless otherwise agreed between the parties, all or any invoices shall be due and payable by the Client before the end of the calendar month after that shown on the invoice.

- 5.8 If the Client fails to pay any sum due on or before the due date for payment, the Company shall be entitled until payment has been made in full and without prejudice to its other rights and remedies:
- 5.8.1 to rescind any discount arrangements as may be detailed in the Proposal; and/or
- 5.8.2 to charge aggregate monthly interest at the rate of 8 per cent per annum (minimum £50.00) from the due date for payment; and/or
- 5.8.3 to suspend the Works until payment has been made in full; and/or
- 5.8.4 to recover all or any Plant and materials as may have been delivered to the Client's premises for the purposes of the Works (and the Client hereby irrevocably consents to the entry by the Company into its premises for this purpose) and the Company shall invoice the Client in respect of all cancellation charges or other charges incurred by it as a result of such suspension which shall be payable by the Client forthwith upon receipt.
- 5.9 The charges set out in the Proposal do not, unless specifically expressed to, extend to:
- 5.9.1 the excavation into rock, hard or contaminated material
- 5.9.2 any specialised dewatering
- 5.9.3 use of trench sheets or specialised bracing or support system
- 5.10 The Company reserves the right to render additional charges in respect of those works detailed at Clause 5.9.
- 6. DATA PROTECTION AND DATA PROCESSING**
- 6.1 The Company shall use the Client's Personal Data to:
- 6.1.1 supply the Works to the Client; and
- 6.1.2 to process the Payments for the Works.
- 6.2 The Company will only share the Client's Personal Data with third parties where the law requires or allows the Company to do so (Legitimate Interest of the Controller - W J Hatt Limited).
- 6.3 The Company shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 6.4 The Company may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- 6.4.1 is (in so far as data protection is concerned) on terms which are substantially the same as those set out in the Contract;
- 6.4.2 on the agreement that no Personal Data shall be used for marketing or advertising purposes; and
- 6.4.3 terminates automatically on termination of the Contract for any reason.
- 7. TITLE AND RISK**
- 7.1 The risk in the Goods shall pass to the Client on completion of delivery.
- 7.2 In relation to the supply of goods, title to the goods shall not pass to the Client until the Client has made full and unconditional payment of:
- 7.2.1 all sums due to the Company under the contract in respect of the goods; and
- 7.2.2 all other sums due to the Company on any account whatsoever, whether arising under contracts entered into before or after the date of the contract.
- 7.3 Until title to the Goods has passed to the Client, the Client shall:
- 7.3.1 store the Goods separately from any and all other Goods held by the Client so that they remain readily identifiable as the Company's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of the delivery;
- 7.3.4 notify the Company immediately if it becomes subject to any financial difficulties.
- 7.4 If before title to the Goods passes to the Client the Company reasonably suspects that the financial position has deteriorated to such an extent that the Client is unlikely to be able to pay for the Goods, then, without limiting any other right or remedy the Company may at any time:
- 7.4.1 require the Client to deliver up all Goods in its possession; and
- 7.4.2 if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.
- 8. LIMITATION OF LIABILITY**
- 8.1 Nothing in the Contract shall limit or exclude the Company's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 8.1.2 fraud or fraudulent misrepresentation; or
- 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, the Company shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 8.2.1 loss of profits;
- 8.2.2 loss of sales or business;
- 8.2.3 loss of agreements or contracts;
- 8.2.4 loss of anticipated savings;
- 8.2.5 loss of use or corruption of software, data or information;
- 8.2.6 loss of or damage to goodwill; or
- 8.2.7 any indirect or consequential loss.
- 8.3 The Company shall not be liable for any damage caused to any electricity, gas or water mains, drains or other underground services unless it is in prior receipt of notification from the Client in accordance with Clause 4.3.
- 8.4 Subject to clause 8.1, the Company's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the amount equal to the Payment for Works paid or due under the Contract.
- 8.5 The Goods supplied by the Company shall only be provided with the manufacturers guarantee and shall not be guaranteed by the Company.

- 8.6 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.7 This clause 8 shall survive termination of the Contract.
9. **CANCELLATION OR TERMINATION**
- 9.1 The Company may, without prejudice to its other rights and remedies, terminate a contract with the Client immediately by giving notice in writing to the Client:
- 9.1.1 if conditions at the site are found to vary materially from those detailed in the Proposal or the ground is found to be unsuitable for machine work;
- 9.1.2 if payment under any contract between the Client and the Company is overdue in whole or in part or if the Client commits any breach of these Terms and (if capable of remedy) fails to remedy such breach within 14 days after written notice requiring it to do so; or
- 9.1.3 if the Client goes into liquidation, becomes bankrupt, has a receiver or administrator appointed, makes or proposes any voluntary arrangement with its creditors, stops or threatens to stop trading, or is insolvent.
- 9.2 Where the Client is a consumer and the Contract has been entered into over the telephone, or online, the Client has the right to cancel this Contract within 14 days of the Commencement Date without giving any reason and must inform the Company in writing of the decision to cancel. The cancellation period will expire after 14 days from the Commencement Date. In the event that the Client has requested the Company to commence performance of the Services during the cancellation period, the Client shall be liable to pay the Company an amount which is in proportion to what has been performed up until the time the notification to cancel the contract is communicated to the Company.
10. **CONSEQUENCES OF TERMINATION**
- 10.1 On termination of the Contract:
- 10.1.1 the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 10.1.2 the Client shall enable the Company to collect any and all of the Company Materials left at the Client's premises. Until they have been collected, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
11. **GENERAL**
- 11.1 **FORCE MAJEURE**
Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **ASSIGNMENT AND OTHER DEALINGS**
- 11.2.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 11.2.2 The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 11.3 **ENTIRE AGREEMENT**
- 11.3.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.3.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 11.3.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 11.4 **WAIVER**
A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 **SEVERANCE**
If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.6 **THIRD PARTY RIGHTS**
- 11.6.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.6.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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