

**1.0 SCOPE & DEFINITIONS**

- 1.1 These Terms and Conditions will become immediately effective from 1st October 2015. They supersede any and all previously agreed to Terms and Conditions, whether verbal, written or otherwise, without exception.
- 1.2 These Terms and Conditions shall be deemed to be incorporated into any contract arising from any quotation, and no other Terms and Conditions which would conflict, vary, qualify or negate any of these Terms and Conditions, will be accepted unless agreed in writing by the Company.
- 1.3 Any Terms and Conditions specified by the Client on an order form, by email, written correspondence or otherwise, shall not be binding on the Company and shall not apply to any contract unless agreed in writing by the Company prior to the commencement of the works.
- 1.4 The Client, by accepting a quotation from the Company or by accepting on to site The Company's equipment or employees for the purpose of undertaking the Contract Works, agrees to be bound by these Terms and Conditions.
- 1.5 Any additional works ordered and agreed by the Client shall be totally binding and not subject to the Client's agreement and contract terms with his employer. Payment of such additional works shall be due as per the Company's Terms and Conditions.
- 1.6 The failure by either party to enforce at any time or for any period any one or more of these Terms and Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions herein.
- 1.7 If any provisions of these Terms and Conditions are unenforceable under English Law, such provision shall be severed from the agreement and the remainder of the provisions shall remain in full force and effect.
- 1.8 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 1.9 The following words and phrases used in these Terms and Conditions have the meanings indicated:
- 1.9.1 "Client" means the person or organisation requiring the works to be carried out, and includes the Client's employees, agents, assignees, successors and personal representatives.
- 1.9.2 "Company" means the company or firm agreeing to carry out the Contract Works and includes its assignees, successors and personal representatives.
- 1.9.3 "Contract Price" means the price agreed by the Company and the Client as payment for the performance by the Company of the Contract Works.
- 1.9.4 "Contract Works" means the obligations of the Company as set out in the agreed quotation.
- 1.9.5 "Day" or "Days" means calendar day(s) unless otherwise specified.
- 1.9.6 "Fixed Price" means a quotation or Contract Price that is not subject to any adjustment on the basis of the Company's cost experience in performing the Contract Works.
- 1.9.7 "Normal Working Hours" means 8.5 continuous hours, subject to working time regulations, of each or any week day commencing no later than 08:00 and finishing at 16:30.
- 1.9.8 "Normal Working Week" means Monday to Friday of each week, subject to working time regulations and bank holidays.
- 1.9.9 "Practical Completion of the Work" or "Practical Completion" means the date at which the Company determines that all work agreed in the quotation has been carried out.

**2.0 QUOTATION & CONTRACT PRICE**

- 2.1 The Company's quotation is not a Fixed Price unless agreed otherwise. All quotations are subject to a final measurement unless expressly stated otherwise in the quotation.
- 2.2 The Company's quotation is based on minimum areas of work to be agreed at pre-contract stage.
- 2.3 All quotations are based on no retention being deducted from any Interim or Final Accounts unless expressly agreed in writing by the Company.
- 2.4 All prices quoted are exclusive of VAT, strictly Net and based upon full payment being made with no main contractor's discount or retention within the period set out in the quotation. Alternative payment terms are subject to prior agreement, in which case discounts or surcharges may apply and will be agreed in writing at pre-contract stage.

- 2.5 The Company's quoted rates or prices are based on Normal Working Hours during the Normal Working Week. Should weekend, bank holiday or other extraordinary hours be required additional costs may be incurred for which the Client will be liable.
- 2.6 The Company's quotation is based on present rates and conditions of labour, plant, materials, transport and handling, adequate supplies of fuel and power and government taxes, and is subject to any variation in these costs as applicable. The Company will give the Client whatever reasonable notice is practicable for any variations in costs.
- 2.7 The Company's quotation does not include for any protection of the works against damage caused by others either during or after completion of our work.
- 2.8 Unless otherwise stated, Contract Works shall be carried out over one continuous visit. Any additional visits required will be charged accordingly to cover labour and plant movement on and off the site plus any additional costs we incur.
- 2.9 Unless expressly stated, the Company's quotation does not allow for any licences, permits or permissions required for the execution of the Contract Works. *Refer to clause 4.2.*
- 2.10 Unless otherwise specified by the Company in writing, the quotation is open for acceptance for a period of three months, after which time the quotation will be subject to written confirmation.
- 2.11 Where the quotation is based on a pavement level survey, variations in the scope of work may be revealed once a fully boarded scaffold or other suitable form of access system is erected and close examination made possible. The Company reserves the right to alter the quotation where the type and extent of work varies from the originally estimated scope of works.
- 2.12 The quotation is based on the visual inspection and assumed condition of the structure, unless stated otherwise with evidence of a written description or detailed plans from the Client, the structural engineer or architect. Any change to those conditions found to exist as work proceeds may result in additional charges to those initially indicated for which the Company will not be held liable.
- 2.13 Unless otherwise specifically noted by the Company in writing, each and every quotation is based on the assumption that the information provided by the Client is complete, true and accurate.
- 2.14 Any contract arising from this quotation will not be subject to any rights to set-off.
- 2.15 If the Company's quotation is subject to an agreed maintenance period, this shall be no greater than one year and shall be deemed to commence on the Practical Completion of the whole of the Contract Works or phased parts as agreed.
- 2.16 Any typographical, clerical or other error or omission in any quotation, completed pricing schedule or acceptance of offer document issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3.0 FORMATION AND TERMINATION OF CONTRACT**

- 3.1 No contract is created before the Company accepts a written order for the carrying out of works as specified in the quotation.
- 3.2 If the Client terminates the contract without the written agreement of the Company, the Client is liable for the full Contract Price. If the Company has agreed in writing to the cancellation, the Client shall be liable for such reasonable proportion of the Contract Price as may be assessed by the Company at that time, together with all costs and charges incurred by the Company or to which it is committed.
- 3.3 Where the Client is found to be in breach of any of the Company's Terms and Conditions, the Company reserves the right to terminate the contract without notice. Such termination of the contract prior to the completion of the work will entitle the Company to be paid for all of the costs to date, including but not limited to materials, labour, transportation and any other associated costs. The invoice raised will be subject to all Terms and Conditions as detailed herein. The Company also retains the right to take further legal action for any monies lost as a direct consequence of the termination of the contract.
- 3.4 If the contract should be terminated or should the Company for any reason whatsoever brought about through the performance of these Terms and Conditions, or by upholding any clauses and/or good practices created by these Terms and Conditions, be forced to refuse to act, the Company will not be liable for any consequential costs and/or damages.
- 3.5 If the Client is a Private Individual then the provision of the contract of sales/service is regulated by the Consumer Contracts Regulations 2013. Private individuals have the right to cancel a contract for sales/service within 14 days of entering into the contract. Where the Client specifically requests the Company to fulfil the contract within

the 14 day cancellation period and the Client cancels the contract during this period, then the Client is required to pay the Company for the value of the sales/service provided up to the date of cancellation. In all cases of cancellation where the contract includes for the provision of specialist materials, specifically ordered for that contract, then the Client will be liable for the full cost of all specialist materials, whether used or not. If the contract is provided in full before the end of the cancellation period then the right to cancel is lost. The regulations do not apply to contracts where the Client has requested the Company to carry out urgent repairs or maintenance.

A cancellation form is provided on Page 6 of these Terms and Conditions.

#### **4.0 AUTHORITY OF CLIENT AND COMPANY**

- 4.1 In consideration of the Client paying all charges due to the Company under the contract, the Company will perform the Contract Works as specified in the quotation on the basis of the information provided and in accordance with the Terms and Conditions contained herein.
- 4.2 The Contract Works shall be carried out by the Company with all reasonable skill and care, and in full compliance of relevant established current professional standards.
- 4.3 The Client will act in full compliance of the relevant established current professional standards expected of them in their business. The Client will act in good faith to provide the Company with all necessary information to conduct an accurate and honest service.
- 4.4 The Client shall ensure a free flow of information in regard to all aspects of the Contract Works being provided by the Company. Where the Client is deemed to have withheld pertinent information that is in detriment to the Company in the performance of the contract, the Company may terminate the contract without notice.
- 4.5 The Client undertakes to provide, whenever required for the purposes of completing any and all works under the contract, the following equipment and services (but not limited to) free of charge: hoisting facilities; rubbish skips for debris removal including hazardous waste; welfare and dry storage facilities; general lighting; mains electric and water supplies accessible to the working area.
- 4.6 The Client is responsible for applying for and securing all licenses, permits and permissions necessary to commence and safely complete any and all elements of the Contract Works. Where any licenses, permits or permissions are obtained by the Company on behalf of the Client, the Client undertakes to pay in full all the associated costs of obtaining such licenses, permits or permissions.
- 4.7 The Client is ultimately responsible for ensuring that the Company has clear and unrestricted access to all areas of operation and is also responsible for all costs incurred should the operation be aborted due to the lack of such clear and unrestricted access, or other circumstances beyond the Company's control. Where work is aborted, or where unplanned waiting time is incurred by the Company, due to lack of appropriate access or interruptions in access due to circumstances beyond the Company's control, the Client will be subject to additional charges at the rate of £280 per day per man or £35 per man-hour, and materials and plant at cost plus 30%.
- 4.8 Where lane closures or other traffic management measures have been put in place to allow the performance of the contract, irrespective of whether the Company has arranged these on behalf of the Client, the Client is ultimately responsible for ensuring that the Company has clear, unrestricted and ongoing access for the duration of the Contract Works.
- 4.9 The Client, in accepting the quotation, agrees to make reasonable provisions to protect fixtures, fittings and any other detail not subject to the Contract Works.
- 4.10 Unless expressly agreed in writing to the contrary, the Company may arrange for any part of the Contract Works to be carried out by agents, sub-contractors or independent contractors who, for the purposes of the contract shall be regarded as the Company and whose rights against and liabilities to, the Client shall be the same as those of the Company under these Terms and Conditions.

#### **5.0 DOCUMENTATION AND DATA PROTECTION**

- 5.1 The Company intends to process certain data which is capable of identifying its clients or any of their employees (Personal Data). Acceptance or adoption by the Client of these Terms and Conditions signifies the Client's absolute consent to allow the Company to process personal data in accordance with the Terms and Conditions and the Data Protection Act 1998.
- 5.2 The Company will hold relevant and pertinent details on behalf of the client and may create a client file in both paper and electronic form.
- 5.3 The Company reserves the right to copy and retain key documentation pertaining to and evidence of all Contract Works provided by the Company for and on behalf of the Client. All information held by the Company will be kept in a secure environment and will be treated as confidential.

- 5.4 Any personal data collected may be utilised by the Company to contact its Clients to supply them with details of the Company's services, news, events, seminars and publications. The Client may opt out of receiving such communications by writing to the Company asking that no further unsolicited communications be sent. The Company will also provide an electronic means to opt out of email marketing on the Company's website and on each of its email newsletters.
- 5.6 The Company may disclose Personal Data if required to do so by law or in good faith in belief that such is necessary:
- 5.6.1 in the performance of the contract in which the Client has instructed the Company to act;
  - 5.6.2 to conform to the law or comply with any legal process;
  - 5.6.3 to protect or defend the rights or property of the Company;
  - 5.6.4 to act under urgent circumstances to protect the personal safety of the Company's employees or the general public.

#### **6.0 LIABILITY OF THE COMPANY**

- 6.1 The Company shall be liable for loss or for damage or injury to persons or property when caused **solely** by the Company's negligence in the performance of the contract and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Client or any third party.
- 6.2 Full details of any loss, damage or injury, which is or may be the subject of a claim by the Client against the Company shall be notified by the Client to the Company within seven days of the date of discovery thereof. Any proceedings to enforce any such claim by the Client against the Company must be commenced not later than twelve months after the date of occurrence of the event giving rise to the loss, damage or injury.

#### **7.0 EXCLUSION OF THE COMPANY'S LIABILITY**

- 7.1 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
- 7.1.1 Inaccurate or incomplete information given by the Client.
  - 7.1.2 Any instructions given by the Client to the Company's employees.
  - 7.1.3 Any defect in the equipment provided by the Client.
  - 7.1.4 Any act or omission of any personnel supplied by the Client, or by any body or person under contract to the Client in connection with the Contract Works, except when correctly following the Company's instructions for the purpose of performing the Company's work under the contract.
  - 7.1.5 Delay in commencing or completing the Contract Works due to circumstances beyond the Company's control including, but not limited to, any strike or other industrial action, adverse weather conditions, terrorism or acts of God.
- 7.2 The Company shall not be liable or responsible for any of the following, however arising:
- 7.2.1 Loss, damage or defects of whatever nature due to or arising through any cause beyond the Company's reasonable control, including any unsuitability, weakness, latent defects in the structure upon which our works shall be carried out.
  - 7.2.2 Whether by way of indemnity or by reason of any breach of the contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the contract, for any of the Client's loss of profit, loss of the use of the plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature.

#### **8.0 INSURANCE**

- 8.1 The Company will carry insurance to cover its potential liability under the contract as set out below:
- 8.1.1 Public Liability Insurance with a maximum claim of £10,000,000
  - 8.1.2 Employers Liability Insurance with a maximum claim of £10,000,000

- 8.1.3 Professional Indemnity Insurance with a maximum claim of £500,000
- 8.2. The Company may, at its discretion, exclude the contract from cover under its existing policies and require a specific insurance policy to cover the contract to be provided by and at the expense of the Client. The details of the nature and extent of this separate cover will be provided to the Client at quotation stage.
- 8.4. If the Company is of the opinion that the insurance cover held by the Client may be insufficient to meet any applicable requirements of the Client's liabilities under the contract, the Company may require the Client to take out at the Client's expense additional liability insurance cover or take out such cover itself and recover the cost from the Client as a debt.
- 8.5. The Client agrees to indemnify the Company against –
- 8.5.1 Any claim arising from or connected with the Company's work on the contract site, in preparing the site or performing the contract, including claims of nuisance and claims of trespass to persons, property, land or air space.
- 8.5.2 All other losses, damages or claims in respect of any matters arising from or in connection with the contract and for which, under these Terms and Conditions, the Client is liable or for which under clause 6 the Company is not liable; and
- 8.5.3 Any liability arising from or in connection with the contract to pay any amount in excess of the relevant limits referred to in clause 8.1.1, 8.1.2, or 8.1.3.
- 8.6. The Client shall insure against its liability to indemnify the Company and all other liabilities of the Client under the contract.
- 8.7. If requested by the Company, the Client shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Client and relevant to the contract.
- 9.0 PAYMENT OF CHARGES**
- 9.1. All charges by the Company are payable strictly as set out in the quotation.
- 9.2. All charges are payable in full. The Client shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Client by another party under any other contract.
- 9.3. Payment of the invoice, valuation or application for payment and any other applicable costs shall be due within 28 Days of the date of the invoice, valuation or application for payment supplied by the Company unless otherwise agreed in the quotation.
- 9.4. Any typographical, clerical or other error or omission in any invoice, valuation or application for payment issued by the Company shall be subject to correction without any liability on the part of the Company.
- 9.5. Unless the Company agrees in writing to the contrary at pre-contract stage, 50% of the total value of any retention agreed will become payable to the Company immediately upon the Practical Completion of the Work. The remaining 50% of the retention will become payable to the Company 12 months after Practical Completion.
- 9.6. Where retention has been agreed between the Company and the Client prior to the commencement of the contract and the works are subject to a guarantee by the Company, the guarantee will not be released until such times as all retention monies have been paid in full. The guarantee period will start from the Practical Completion of the Work, the date of which will be set by the Company.
- 9.7. Any disputes with regard to the Company's invoice, valuation or application for payment must be raised in writing by the Client within 14 days of the date of invoice, valuation or application for payment. Failure to do this will result in the full amount being made payable.
- 9.8. Should the Client's capability to pay the Company's charges in full and on time change for whatever reason, the Client undertakes to inform the Company immediately.
- 9.9. Should a payment fail to clear then the Client shall be charged a £25 banking administration fee, per failed payment submission, in addition to the outstanding payment, which must then be made prior to the or completion of any further services.
- 9.10. The Company will enforce its right to add interest and administration costs for late payments under the Late Payment of Commercial Debts Regulations 2002 or any other subsequent regulations that supersede them.
- 9.11. The Company reserves the right to pursue through legal means, any costs, late payments or any outstanding balance howsoever caused. In such circumstances the Client will become liable for any fees, charges, interest or any other cost incurred by the Company in the pursuance of the payment.

CANCELLATION FORM	
<p><b>To:</b></p> <p>St Astier Limited 11 Enterprise Court Seaham Grange Industrial Estate Seaham SR7 0PS</p> <p><b>Tel:</b> 0191 5214552</p> <p><b>Email:</b> info@st-astier.co.uk</p>	
<p>I/We [*] hereby give notice the I/We [*] cancel my/our [*] contract for the supply of the following service [*] delete as appropriate</p>	
Contract/Quotation number:	
Date ordered:	
Name of Client:	
Address of Client:	
Address for sales/services to be carried out at (if different from above):	
Client Signature:	
Date:	