

1. Introduction

This Agreement sets out your responsibilities to us and our responsibilities to you.

1.1. What makes up this Agreement?

These terms and conditions, the Purchase Order, the Site Rules (as replaced from time to time) any Quotation in existence and any Order Confirmation in existence, make up this Agreement for your supply of the Service to our Customer.

1.2. Who's who in this Agreement?

KDH Projects Limited (company number: 05385561) who is the main contractor will be referred to as 'us', 'we', 'our'. We refer to you who is the subcontractor, as 'you', or 'your' (which shall also include your employees and agents). We refer to both parties by the use of normal English such as 'both of us' or 'either of us'. We will refer to our Customer being the organisation identified to you in the Relevant Purchase Order.

1.3. No other terms or conditions apply.

The terms and conditions of this Agreement replace all previous agreements or arrangements (whether written or oral) between us both in relation to the Service. No additions to, changes to, or conditions inconsistent with this Agreement will be binding upon us unless we expressly agree in writing.

2. How Long Will This Agreement Last?

2.1 The start of this Agreement.

Your agreement with us starts on the date when you provide us with confirmation of your acceptance of the Purchase Order (in the event of us not receiving your written confirmation, you commencing provision of the Service shall be confirmation of your acceptance of these terms and conditions) and shall continue in force until completion of your obligations under this Agreement unless terminated earlier in accordance with Condition 7.

2.2 The start of the Service.

Your provision of the Service will begin from the date as set out in the Purchase Order or, if no date is set out in the Purchase Order, on the day of which we inform you.

3. What Will You Charge for the Service?

3.1 Your Charges

Your charges will be as stated in the Quotation (if there is one in existence), or, as otherwise agreed in writing between us. You shall be entitled to invoice us at the frequency communicated to you by us.

3.2 VAT

You will ensure that any invoice for the Service contains adequate details of the VAT.

3.3 Taxes

You will be solely responsible for any tax payable by you in relation to this Agreement and in relation to the Charges payable to you under this Agreement. You will indemnify us fully in relation to any loss suffered by us in this regard immediately upon demand.

3.4 Price

You are not entitled to charge us for any Services which are in addition to those set out in the Purchase Order without prior written approval from us, the giving of such approval to be in our absolute discretion.

3.5 Wasted Journey

We will not be responsible for any costs/losses associated with wasted journeys to Service Locations.

3.6 Travel Costs

We will not be liable to pay travel costs/time to you.

3.7 National Insurance

It is expressly denied by both of us that there is an employment relationship between you and us, nor do we intend an employment relationship to arise at any time. Notwithstanding this, you will ensure that each invoice for the service contains adequate details for National Insurance purposes.

4. Payment for the Service?

4.1 Within 60 days.

Unless otherwise agreed and set out in the Purchase Order, we will pay to you all amounts

due within 60 days of the end of the month of the date of your invoice. Time shall not be of the essence in respect of payments due to you under this Agreement.

4.2 What happens if we do not pay within 60 days of the end of the month of the date of each invoice?

Without prejudice to any rights of either of us may have elsewhere in this Agreement.

(a) any amounts due from us which are not paid within 60 days of end of the month of the date of each invoice may attract charges and interest on a daily basis at the rate of 4% above the base rate of National Westminster Bank Plc. Please note that the Relevant Purchase Order number must be quoted on all invoices otherwise payment could be delayed;

(b) if we (acting in good faith) dispute any amount claimed under any invoice we will inform you as soon as we can;

(c) you shall not be entitled to suspend (without prejudice to any other right to receive payment or remedy available) the performance of the Service.

4.3 We shall be entitled to set off any sums owed by you to us against any sums owed by us to you. You shall not be entitled to set off any sums owed by you to us against sums owed by us to you.

5. When Can You Change Your Charges?

5.1 What if your costs change?

You shall not be entitled to amend your Charges without our written agreement which we shall be entitled to withhold in our absolute discretion.

6. Written Notices

6.1 Your requirements

Whenever under this Agreement you are required or allowed to give Written Notice to us, such Written Notice must be in writing and sent by recorded or registered post or hand delivered (for which a written confirmation of receipt must be obtained) to our registered office as set out in overleaf.

6.2 Our requirements

Whenever under this Agreement we are required or allowed to give Written Notice to you, such Written Notice must be in writing and sent by post or hand delivered (for which a written confirmation of receipt must be obtained) to your address set out in the Purchase Order. Written Notices sent with, or forming part of, any invoice will be satisfactory given for the purposes of this Agreement.

6.3 A Written Notice will be deemed to be received.

If sent by post then two Working Days following posting.

If delivered by hand then on the next Working Day.

6.4 Faxes and e-mails are not acceptable

We both agree that any Written Notices sent by facsimile or e-mail will not be satisfactorily served for the purposes of this Agreement.

7. Ending The Service

7.1 We may end the Service, and therefore this Agreement at anytime, by giving you not less than one month's Written Notice.

7.2 Without prejudice to any other rights which we may have under this Agreement, we may give you Written Notice to end this Agreement at once if you are in breach of your obligations. Example breaches include you failing to carry out the Service in accordance with this Agreement.

7.3 This Agreement will end at once if: a bankruptcy order is made against you; you make a voluntary arrangement with your creditors; you have a receiver, an administrator or an administrative receiver appointed for any part of your assets; an order is made or a resolution passed for your winding up (except for the purposes of its reconstruction or amalgamation). This Condition is written to cover individuals, partnerships and companies and should be interpreted in line with this.

7.4 This Agreement will end at once if the Customer has a bankruptcy order made against it, enters into a voluntary arrangement with its creditors, a receiver, liquidator or administrator is appointed, or a resolution is passed for the winding up of the Customer.

7.5 Ending this Agreement will be without prejudice to any rights or liabilities that either of us may have accrued to that date.

7.6 For the period of the Agreement and for a period of 12 months immediately following the termination or expiry of this Agreement, you undertake that you shall not canvass, solicit or approach, or cause to be canvassed, solicited or approached, any Customer for the sale or supply of similar services to the Service.

7.7 For the period of the agreement and for a period of 12 months immediately following the termination or expiry of this Agreement, you undertake that you shall not employ or engage any of our employees with whom you have had dealings and/or is in possession of Confidential Information belonging to us. This undertaking shall not apply in respect of any member of our staff who without having been previously approached directly or indirectly by you, are employed by you in response to an advertisement placed by you or on your behalf. If you do such an act, you will immediately pay us a fee equal to 50% of the first 12 month's gross salary (including benefits that are paid to that person, plus VAT) of the relevant individual. This payment will not affect any other legal rights we may have in this regard. You acknowledge that this provision is a fair and reasonable term intended to be a genuine assessment of the likely consequential loss us.

7.8 On the ending of this Agreement for whatever reason, you shall provide us with reasonable assistance in respect of the transition to a new supplier of the Service to the Customer.

8. Your Service Responsibilities & Obligations

8.1 Are there expected service levels?

Yes. We expect you to follow the Site Rules. We also expect you, at your own cost, to supply and use all personal protective equipment in accordance with the Site Rules and the risk assessment document.

8.2 Customer Service Location

You must notify us as soon as reasonably practical if you consider a Service Location is not being operated in line with Legal Rules.

9. How Can Your Service Requirements Be Changed?

9.1 Service Reductions

If we agree with the Customer to change the Service (either reduction or increase) as we consider suitable (acting reasonably), we will notify you of the same and this Agreement shall be amended to take account of such amendment. You shall be entitled to submit an amended Quotation/cost schedule for our approval, such approval not to be unreasonably withheld by us.

10. Service Suspension

10.1 You are not entitled to suspend provision of the Service without our prior written consent. In particular you are not entitled to suspend the provision of Service for non-payment of Charges by us.

10.2 If the Service Location is closed for any reason, we are entitled to suspend the provision of the Service on the provision of one day's Written Notice to you at no cost to us (unless with prior agreement).

11. Risks and Liabilities

11.1 Your responsibility

You will indemnify us against any injury, demand, action, cost, loss, damage or liability which we incur in respect of the provision of the Service to the Customer including without limitation from: breach of duty of care, infringement of copyright, or other intellectual property rights, libel, slander or defamation, breach of confidentiality, breach of contract, any act, omission or negligence of you,

your employees or agents. We shall be entitled to deduct any money owing to us by you under this Condition 11.1 from any charges owing to you.

11.2 Health and Safety

Without limiting our obligations in respect of health and safety you will be responsible for the safety of your employees and agents whilst on or about the Service Locations.

We pre-qualify the safety, environmental and quality arrangements of all our suppliers. You may therefore be required to complete a questionnaire as part of the pre-qualification process which has been developed in response to the Health & Safety at Work Act 1974 and the Management of Health & Safety at Work Regulations 1999. Only once this information has been reviewed and approved by our Safety, Health & Environment department will you be qualified to work with or on behalf of us.

You shall:

(a) observe, and ensure that you, your employees and agents, observe, all health and safety rules and regulations and any other security requirements that apply at the Service Location including food hygiene standards. We reserve the right to refuse you access to the Service Location, which shall only be given to the extent necessary for the performance of the Service.

You will indemnify us, in full, for any breach by you, your employees or agents of the provisions of this Condition 11, including, without limitation, causing harm to the Customer, its' employees or any third party whilst carrying out the Service at the Service Location.

11.3 Insurance

Unless specifically stated in writing by us otherwise, you will maintain insurance cover in respect of your liabilities and indemnities under this Agreement including without limitation:

- (a) public and employer's liability insurance to a level of not less than £5,000,000;
- (b) employer's liability insurance to a level of not less than £10,000,000.
- (c) motor insurance (the minimum coverage being damage to third party property to a level of not less than £5,000,000 and unlimited in respect of bodily injury).
- (d) professional indemnity insurance to a level of not less than £1,000,000.

You will be obliged to provide us with a copy of each insurance policy as proof of maintaining such cover.

11.4 Professional Certificates/Licences

You shall be responsible for ensuring that you have all the requisite licences, permits, certificates and qualifications to ensure compliance with the Legal Rules in respect of carrying out the Services. You will, if we ask, provide to us a copy of any such documentation.

12. What Else Should You Know?

12.1 Legal compliance

You will comply with all Legal Rules that apply to the Service. We may change this Agreement or the Service as we consider suitable (acting reasonably) to comply with any change in interpretation of Legal Rules or with any new Legal Rules.

12.2 Ineffective terms and conditions

If a court or other competent body decides that any part of this Agreement (including any exclusion, restriction or limitation of liability) is invalid or ineffective then the rest of the Agreement will not be affected. If as a result of any decision we then become liable for loss or damage that we would not otherwise have been liable for then that loss or damage will be subject to all unaffected parts of this Agreement (including all unaffected exclusions, restrictions or limitations).

12.3 Governing Law

The laws of England and Wales will apply to this Agreement. Any legal proceedings in connection

with this Agreement must be bought within England or Wales.

12.4 Waiver

If we do not insist on any right under this Agreement we may still insist on that right at a later date.

12.5 Assignment

We may assign or transfer any of our rights or responsibilities under this Agreement at any time. You may not assign, sub-contract or transfer any of your rights or responsibilities under this Agreement without our prior written consent.

12.6 Contracts (Rights of Third Parties) Act 1999

This act will not apply to this Agreement.

12.7 Telephone calls

We may record or monitor telephone calls made between us or any other person.

12.8 Signing this Agreement

We are entitled to assume that the person signing this Agreement on your behalf is duly authorised to bind you legally to your responsibilities, obligations and liabilities under it.

12.9 Data protection

The information you provide to us will be processed by us and may be shared with the Environment Agency and other organisations as we feel appropriate under Legal Rules.

12.10 Arbitration

Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by an arbitrator agreed by the parties or, in default of agreement within 30 days of service of notice by one party on the other to concur in the appointment of an arbitrator, by an arbitrator appointed, on the application of either party, by the President of The Chartered Institute of Arbitrators.

12.11 No partnership or joint venture

The parties acknowledge and agree that the agreement shall not establish or constitute any relationship of partnership, joint venture, franchise or agency between the parties and except as otherwise expressly provided or agreed neither party shall have the power to bind the other without the other's prior written consent.

12.12 Confidentiality

During the term of this Agreement and after its termination, you shall not use any Confidential Information for the purpose other than the performance of your obligations under this Agreement. Nor shall you disclose Confidential Information to any person except with our prior written consent. You shall make every effort to prevent the use or disclosure of Confidential Information. For the avoidance of doubt you shall not be entitled in anyway to use any Confidential Information which you receive from us which relates to a Customer for marketing purposes.

12.13 Social Networking

You recognise that your use of social media can pose risks to our confidential and proprietary information, and reputation, and can jeopardise our compliance with legal obligations. To minimise risk, and to avoid loss of productivity, you shall ensure that social media is never used in a way that jeopardises (whether potential or actual) our reputation or disrupts the efficient interaction of staff or the business generally. You acknowledge that this provision is a fair and reasonable term and if you do act in breach of the terms of this provision, you will fully indemnify for any losses and costs suffered as a result.

Words and Phrases Used In This Agreement

Charge means the amount payable by us for the Services calculated in accordance with Condition 3.

Confidential Information means all confidential information disclosed (whether in writing, orally or by other means either directly or indirectly) by us to you whether before or after the date of this Agreement including, but not limited to, information relating to our services, operations, processes, plans or intentions, service information, know how, design rights, trade secrets, market

opportunities, business affairs, our financial information, including pricing, and our Customers.

Customer means our customer as set out in the Purchase Order and to whom you will supply the Service.

Legal Rules means any UK or European legislation, provision of common law or requirement of any authorisation, licence, consent, permit, code of practice, rule or guidance note.

Order Confirmation means: the document(s) prepared by us and attached to the Purchase Order confirming our order of the Service.

Purchase Order means the document(s) setting out the details of the Service required to be provided by you during the term of this Agreement. **Quotation** means: the quotation document provided by you and attached to the Purchase Order.

Service means: the provision of the services as detailed in the Purchase Order to be provided at the Service Location

Service Location means the location set out in the Purchase Order.

Site Rules: means the site rules governing the Service Location.

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

Working Day means a day on which the banks are generally open for banking business in London.

Written Notice means a written notice in line with Condition 6.

Also in this agreement

- Condition together with a number means that condition here with that number
- The interpretation of any examples given will not be restricted in any way to the listed example(s).