



## TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).**

**1. INTERPRETATION**

**THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.**

**1.1 Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 10.5.

**Contract:** the contract between Carr Civil Engineering Ltd and the Customer for the supply of Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Customer:** the person or firm who purchases Services from Carr Civil Engineering Ltd.

**Customer Default:** has the meaning set out in clause 4.2.

**Deliverables:** the deliverables set out in the Order produced by Carr Civil Engineering Ltd for the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in processes, materials, get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by Carr Civil Engineering Ltd, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by Carr Civil Engineering Ltd to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by Carr Civil Engineering Ltd to the Customer.

**Supplier:** Carr Civil Engineering Ltd registered in England and Wales with company number 06541842.

**Supplier Materials:** has the meaning set out in clause 4.1 (h).

## 1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes faxes and emails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Carr Civil Engineering Ltd issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Carr Civil Engineering Ltd, and any descriptions or illustrations contained in the Carr Civil Engineering Ltd's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by Carr Civil Engineering Ltd shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

3.1 Carr Civil Engineering Ltd shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 Carr Civil Engineering Ltd shall use all reasonable endeavours to meet any performance dates specified in the quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 Carr Civil Engineering Ltd reserves the right to amend the specification 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 Services, and Carr Civil Engineering Ltd shall notify the Customer in any such event.

3.4 Carr Civil Engineering Ltd warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete, accurate and that a relevant purchase order number has been issued;
- (b) co-operate with Carr Civil Engineering Ltd in all matters relating to the Services;
- (c) provide Carr Civil Engineering Ltd, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities including 3<sup>rd</sup> party meetings as reasonably required by Carr Civil Engineering Ltd;
- (d) provide Carr Civil Engineering Ltd with such information and materials as Carr Civil Engineering Ltd may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all materials, equipment, documents and other property of Carr Civil Engineering Ltd (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to Carr Civil Engineering Ltd, and not dispose of or use Carr Civil Engineering Ltd Materials other than in accordance with Carr Civil Engineering Ltd's written instructions or authorisation.

4.2 If Carr Civil Engineering Ltd's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Carr Civil Engineering Ltd shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Carr Civil Engineering Ltd's performance of any of its obligations, including but not limited to any failure to provide a purchase order number;
- (b) Carr Civil Engineering Ltd shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Carr Civil Engineering Ltd's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Carr Civil Engineering Ltd on written demand for any costs or losses sustained or incurred by Carr Civil Engineering Ltd arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated as follows: on a time and materials basis:

- (a) the Charges shall be calculated in accordance with Carr Civil Engineering Ltd's those, as set out in the quotation;
- (b) Carr Civil Engineering Ltd shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Carr Civil Engineering Ltd engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost

of services provided by third parties and required by Carr Civil Engineering Ltd for the performance of the Services, and for the cost of any materials.

5.2 Carr Civil Engineering Ltd shall invoice the Customer on completion of the Services.

5.3 The Customer shall pay each invoice submitted by Carr Civil Engineering Ltd:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Carr Civil Engineering Ltd, and

time for payment shall be of the essence of the Contract.

5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).

5.5 If the Customer fails to make a payment due to Carr Civil Engineering Ltd under the Contract by the due date, then, without limiting Carr Civil Engineering Ltd's remedies under Clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.5 will accrue each day at 8% a year.

5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Carr Civil Engineering Ltd.

6.2 Carr Civil Engineering Ltd grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.

6.3 The Customer shall not disclose to any third party any processes, materials or procedures used by Carr Civil Engineering Ltd or, sub-license, assign or otherwise transfer the rights granted in Clause 6.2.

**7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 7.1 Carr Civil Engineering Ltd has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 7.2 The restrictions on liability in this Clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 7.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.5 Subject to clause 7.4, Carr Civil Engineering Ltd total liability to the Customer shall not exceed the total charges.
- 7.6 In Clause 7.5;
- (a) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 7.7 This Clause 7.7 sets out specific heads of excluded loss:
- (a) Subject to Clause 7.2, the types of loss listed in Clause 7.7(b) are wholly excluded by the parties.
  - (b) The following types of loss are wholly excluded:
    - (i) loss of profits
    - (ii) loss of sales or business.
    - (iii) loss of agreements or contracts.
    - (iv) loss of anticipated savings.
    - (v) loss of use or corruption of software, data or information.

- (vi) loss of or damage to goodwill; and
- (vii) Indirect or consequential loss.

7.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

7.9 This Clause 7 shall survive termination of the Contract.

## **8. TERMINATION**

8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, Carr Civil Engineering Ltd may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.3 Without affecting any other right or remedy available to it, Carr Civil Engineering Ltd may suspend the supply of Services under the Contract

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or any other contract between the Customer and Carr Civil Engineering Ltd if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.1 (b) to clause 8.1 (d) or Carr Civil Engineering Ltd reasonably believes that the Customer is about to become subject to any of them.

## 9. CONSEQUENCES OF TERMINATION

On termination of the Contract:

- (a) the Customer shall immediately pay to Carr Civil Engineering Ltd all of Carr Civil Engineering Ltd's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Carr Civil Engineering Ltd shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Carr Civil Engineering Ltd Materials and any Deliverables which have not been utilised or fully paid for. If the Customer fails to do so, then Carr Civil Engineering Ltd may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

9.2 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.

9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 10. GENERAL

10.1 **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.

10.2 **Assignment and other dealings.**

- (a) Carr Civil Engineering Ltd 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.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

### 10.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract or after termination of the Contract, disclose to any person any confidential information concerning the processes used by Carr Civil Engineering Ltd except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 10.4 **Entire agreement.**

- (a) 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.
- (b) 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

10.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 **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 right 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.

10.7 **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.

10.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in [admin@carrcivilengineering.co.uk](mailto:admin@carrcivilengineering.co.uk)
- (b) Any notice or other communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
  - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this *Clause 10.8(b)(iii)*, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

10.9 **Third party rights.**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.10 **Governing law.** 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 accordance with the law of England and Wales.

10.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

