

**THE TERMS AND CONDITIONS OF CONTRACT FOR ENVIRONMENTAL CONSULTANCY** of The Airshed Limited (**SC309129**) 5 Lauder Place, East Linton, East Lothian, EH40 3DB.

The Client acknowledges and engages with the Consultant on the basis that these Terms and Conditions of Contract apply to the exclusion of any other terms and conditions, unless otherwise expressly agreed in writing between the Parties

**DEFINITIONS**

**'Agreement'** means these Terms and Conditions of Contract for the Services together with the Proposal.

**'Client'** means the individual or organisation with whom this Agreement is made and indicated by that Party's acceptance of the Proposal.

**'Consultant'** means The Airshed Limited (**SC309129**), with a registered office at 5 Lauder Place, East Linton, East Lothian, EH40 3DB.

**'Force Majeure'** means war, acts of foreign enemies, terrorism, revolution, riot, civil commotion, fire, flood or other natural disaster, radioactive contamination or any other circumstance whatsoever beyond the reasonable control of either Party.

**'Letter of Reliance'** means a letter of reliance in the Consultant's prescribed form.

**'Limit of Liability'** is the maximum amount of liability of the Consultant under this Agreement, as set out in clause 7.3.

**'Parties'** means the Consultant and the Client and **'party'** shall mean either the Client or the Consultant.

**'Price'** means the set of rates and associated budget estimate or lump sum price detailed in the Proposal (and any additional out of pocket expenses) or as otherwise agreed in writing by the Parties.

**'Proposal'** means the proposal(s) submitted by the Consultant detailing the Services that the Consultant intends to provide for the Client which must be accepted by the Client within 90 days.

**'Relevant Information'** means all information in the possession or control of the Client or otherwise available to the Client relating to its operations and sites, including but not limited to relevant environmental data, environmental procedures, legislative compliance, energy systems, waste and water management, transport and procurement, together with all plans, surveys, reports, previous environmental investigations and any other relevant data known to the Client.

**'Report'** means the report(s) created by the Consultant describing the result of the Services and related matters.

**'Service Product'** means the Proposal, Report and all charts, tables, drawings, graphs, opinions, advice and recommendations, written or oral, made by the Consultant pursuant to the Services.

**'Services'** means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement.

**'Site'** means the area(s) the Services relates to.

**1. CONSULTANT'S DUTIES**

- 1.1 Subject to the terms of this Agreement, the Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and in accordance with the standards of a qualified and competent environmental consultant experienced in carrying out work of a similar scope and complexity to the Services and current at the time when the Services are performed.
- 1.2 The Consultant will perform the Services generally in accordance with the Proposal, but reserves the right to vary the Services if it appears to the Consultant reasonably necessary to do so either as a result of Site conditions, environmental or health and safety factors, or the discovery of any other information, which has a material effect on the Services. In the event of a variation in the Services due to the reasons described above or in the event that the Client requests a variation to the Services, the Consultant shall notify the Client promptly of the costs of such variations and the Client shall pay such additional costs incurred at the rates set out in the Price, or for such agreed sum as is agreed between the Parties in writing.
- 1.3 The Consultant will take all reasonable precautions to avoid damage to property belonging to the Client or any third party, subject always to clauses 2.1 and 7.3.

- 1.4 The Consultant may use sub-contractors, sub-consultants and/or agents to perform part of the Services. In such event, the Consultant shall exercise all reasonable care to ensure that such sub-contractors, sub-consultants and/or agents are appropriately skilled and experienced in relation to the work, which they are instructed to carry out.
- 1.5 The Client acknowledges that the Services and the Service Products will not necessarily reveal all adverse or other material conditions at the Site that could be identified either through a different formulation of the Services or through more detailed work being carried out by the Consultant.

## **2. CLIENT'S OBLIGATIONS**

- 2.1 The Client acknowledges that in agreeing to provide the Services, the Consultant has relied upon the Client to make full disclosure of all Relevant Information (including known health and safety dangers and/or hazards on the Site or affecting the Site or in or affecting any building on the Site and of any known health and safety and/or hazards in the vicinity of the Site, including but not limited to the presence of asbestos and asbestos containing materials, hazardous chemicals, vagrants, dangerous animals, unsafe ground or buildings). The Client shall transmit promptly to the Consultant any new Relevant Information, which becomes available or any other information, which may materially affect the Services.
- 2.2 The Client shall provide access to the Consultant to any Relevant Information and authorises the Consultant to take photographs, copies and samples of any Relevant Information for the purpose of providing the Services.
- 2.3 The Client shall, at its own expense, promptly provide free access to the Site or where the Client is not the Site owner, use its best endeavours to procure such access. The Client shall also provide or procure any permits or other clearances reasonably required by the Consultant to carry out the Services.
- 2.4 If the Client suspects at any time that any part of the Services is not being performed in accordance with the terms of this Agreement, the Client shall immediately notify the Consultant and allow the Consultant reasonable time to take appropriate corrective action.

## **3. USE OF RELEVANT INFORMATION**

All Relevant Information shall be returned to the Client upon request after use or completion of the Services by the Consultant or termination of this Agreement under clause 10, provided that the Consultant shall have the right to take copies of any Relevant Information for its own records, subject to the confidentiality obligations set out in clause 5.

## **4. COPYRIGHT IN SERVICE PRODUCTS, RELIANCE ON REPORTS AND ASSIGNATION**

- 4.1 Copyright and all intellectual property rights in Service Products shall remain vested in the Consultant at all times.
- 4.2 After payment of the Price, the Consultant shall grant the Client a royalty-free licence to reproduce the Report for the Client's own use, provided always that the Report shall be used exclusively for its originally intended purpose as stated by the Consultant in the Report.
- 4.3 The Client may without further charge make the Report available to any third party provided that such third party may not rely upon the Report unless it enters into a Letter of Reliance, provided by the Consultant, under clause 4.4.
- 4.4 No third party may make any reliance on the Report in whole or in Part unless the Consultant, at its discretion and by prior arrangement with the Client, enters into a Letter of Reliance with the third party who agrees, inter alia, to be bound by the same conditions and limitations as the Client, following which (subject to payment of any fees due to the Consultant by the third party) the third party shall be entitled to rely upon such Report exclusively for its originally intended purpose. The Consultant has the right to charge the Client a fee for entering into the Letter of Reliance.
- 4.5 The Client may without charge make the Report available to any person or persons for whom the Client is acting in a professional capacity in relation to the Report provided that such person or persons accepts all of these Conditions of Contract in their entirety.

## **5. CONFIDENTIALITY**

- 5.1 The Parties will treat the details of this Agreement and any written or oral information about the Services, including the Service Products, as private and confidential and neither of them shall publish or disclose any detail thereof to any third party except as permitted in this

Agreement. This duty of confidentiality shall not apply to information which a Party can show by reasonable documentary proof:

- a) to have been in the public domain at the time of receipt by such Party; or
- b) to have become known to the public through no fault of such Party after receipt thereof; or
- c) is required to be disclosed pursuant to applicable laws or a legally binding order of any competent judicial governmental or regulatory body.

5.2 Before the disclosure of any information pursuant to clause 5.1 (c) the disclosing Party will (to the extent permitted by law) inform the other Party of the circumstances and the details of the information to be disclosed at the earliest possible opportunity.

## **6. PAYMENT**

- 6.1 Unless agreed in writing by the Parties (where it may be agreed that an advance or part payment shall be made prior to or during the performance of the Services) the Consultant shall submit invoices on completion of the Services. The Consultant reserves the right to issue a further invoice to capture any management time or expenses incurred in pursuing payment of the invoice.
- 6.2 Where it has been agreed that the Consultant shall receive an advance payment prior to the commencement of the Services but the Client subsequently decides not to proceed, or is unable to proceed with the Services, then the Consultant shall refund the advance payment less any reasonable costs incurred by the Consultant.
- 6.3 The Client shall pay for invoices no later than thirty (30) days after the invoice date.
- 6.4 The Client shall be liable to pay interest on overdue accounts at four (4) percent above the rate charged by Royal Bank of Scotland plc, at the Consultant's discretion.
- 6.5 VAT shall be payable in addition to the Price.
- 6.6 In order to continually improve the quality of our work, the Consultant may seek feedback prior to submitting an invoice for work completed.
- 6.7 For the avoidance of doubt, the Client shall be liable to pay for additional work which is instructed by the Client subsequent to agreement of the Proposal, including updating any Report.
- 6.8 Where Services are performed for a client outside the UK the Consultant will issue an invoice in GBP or in another currency at its discretion.

## **7. LIABILITY OF THE CONSULTANT**

- 7.1 Subject to the other sub-clauses of this clause 7, the Consultant's liability shall be limited to the extent of any loss, damages, injury, expenses, costs (including legal costs) that are directly caused by the failure of the Consultant or any sub-consultant, sub-contractor or agent to carry out the Consultant's Duties in accordance with clause 1. If the Client becomes aware of circumstances which might give rise to a claim against the Consultant, it is a condition precedent to the liability of the Consultant that the Client shall give notice of such circumstances to the Consultant with sixty (60) days of the Client becoming aware of them.
- 7.2 The Consultant's liability under this Agreement shall end one (1) year from the date when the Services were completed or the last date of the Report (whichever is earlier).
- 7.3 The aggregate Limit of Liability arising directly or indirectly from the Services and this Agreement whether under contract, delict or any other legal basis is one million pounds (£1,000,000).
- 7.4 Neither Party shall be liable to the other for any loss of profit, loss of revenue, business interruption, or any indirect or consequential losses incurred by the other Party, whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering this Agreement.
- 7.5 Nothing herein shall exclude or limit either Party's liability to the other in respect of any fraudulent misrepresentation made by it, or in respect of death or personal injury caused by its negligent errors, acts or omissions.
- 7.6 All Employees of the Consultant are specifically excluded from having any personal liability to the Client or any third party.

## **8. INSURANCE**

The Consultant maintains professional indemnity insurance (up to a value of £1,000,000) and public liability insurance (up to a value of £2,000,000), provided such insurance is available in the market at commercially reasonable rates and terms, in respect of the Services and maintains such insurance for a period of 1 calendar year from the date of any Report issued

or the completion of the Service in accordance with these terms and conditions. The Consultant shall upon request provide evidence that such insurance coverage is provided up to the Limit of Liability.

## **9. FORCE MAJEURE**

- 9.1 Neither Party shall be liable for any delays or failure to perform any obligations because of Force Majeure. In the event of Force Majeure, both Parties shall use all reasonable endeavours to overcome any difficulties thereby arising and shall resume their respective obligations under this Agreement as soon as is reasonably possible.
- 9.2 If Force Majeure continues for more than ninety (90) days, either Party may terminate this Agreement by written notice to the other. The Consultant shall be entitled to charge the Client for all Services performed prior to the Force Majeure in accordance with the Price together with all expenses reasonably incurred by or accruing to the Consultant during the Force Majeure period.

## **10. TERMINATION**

- 10.1 Either Party may by written notice terminate this Agreement if the other substantially fails to perform its obligations under this Agreement, provided that the terminating Party has first given the other Party not less than twenty one (21) days written notice to the other specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.
- 10.2 The Consultant may by written notice terminate this Agreement immediately if the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or enters into liquidation (whether voluntary or compulsory) or if any proceedings are commenced relating to the insolvency or possible insolvency of the Client.
- 10.3 In the event of termination for any cause whatsoever, the Consultant shall be entitled to be paid for Services performed up to the date of termination.

## **11. NOTICES**

Any notice to be given by one Party to the other shall be served by sending such notice by post, or by hand to the addresses specified in the Proposal. Notices shall be deemed to have been received by the recipient Party as follows:

- a) by post, four days after posting within the United Kingdom or
- b) within ten days for posting outside the United Kingdom;
- c) by hand, at the time of delivery.

## **12. SEVERABILITY**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining parts of this Agreement shall remain in force and shall not in any way be impaired.

## **13. THIRD PARTY RIGHTS**

This Agreement and the documents referred to in it are made for the benefit of the parties to them and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else unless the Consultant has entered into a Letter of Reliance with that third party in accordance with clauses 4.3 and 4.4.

## **14. GOVERNING LAW AND DISPUTE RESOLUTION**

- 14.1 If at any time any dispute arises between the Client and the Consultant in relation to this Agreement or in connection with the Services, the Consultant and the Client will try and resolve the dispute amicably, failing which the dispute shall be submitted to arbitration by a sole arbitrator. If the Parties cannot within twenty one (21) days of a proposal to do so, agree on an arbitrator, then the sole arbitrator shall be appointed by the President of an appropriate professional institute considering the nature of the dispute.
- 14.2 This Agreement shall be governed by and construed in accordance with the laws of Scotland.

## **15. ENTIRE AGREEMENT**

- 15.1 This Agreement constitutes the entire agreement and understanding between the Parties.

15.2 The Client acknowledges that it has had an opportunity to negotiate changes to these Conditions of Contract for Environmental Consultancy Services and has agreed to these Conditions of Contract.