



Terms and Conditions for the Supply of Investigative, Design, Consultancy or Supervisory Services provided by Keresley Engineering Services Ltd. ("KES")

1. Definitions

1.1. In these terms and conditions:

- a) "Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- b) "Charges" means the charges payable by the Customer for the supply of the Services in accordance with Clause 5;
- c) "Commencement Date" has the meaning set out in Clause 2.2;
- d) "Conditions" means these terms and conditions as amended from time to time in accordance with Clause 14;
- e) "Contract" means the contract between KES and the Customer for the supply of Services in accordance with these Conditions;
- f) "Control" shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
- g) "Customer" means the person or firm who purchases Services from KES;
- h) "Customer Default" has the meaning set out in Clause 4.2;
- i) "Deliverables" mean the deliverables set out in the Order produced by KES for the Customer.
- j) "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in 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;

k) "Order" means the Customer's order for Services as set out in the Customer's purchase order form OR overleaf OR the Customer's written acceptance of KES' quotation, as the case may be.

l) "Services" means the services, including the Deliverables, supplied by KES to the Customer as set out in the Specification;

m) "Specification" means the description or specification of the Services provided in writing by KES to the Customer;

n) "Supplier" or "KES" means Keresley Engineering Services Ltd. registered office address: 12 Yarnmakers Path, Coventry CV7 8RN with company number 11819191;

o) "Supplier Materials" has the meaning set out in Clause 4.1.g.

p) "Template Agreement" means the standard ACE Professional Services Consumer Agreement 2019 Edition. Where there are conflicting rights or obligations between these terms and the template agreement, these terms shall apply.

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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

b) Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

c) A reference to writing or written includes email and other electronic forms of communication.

2. Basis of Contract

2.1. The Order constitutes an offer by the Customer to purchase Construction Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when KES issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("Commencement Date"). KES reserves the right to reject or refuse any order (or variation) which does not comply with the Terms, the Template Agreement and/or the quotation.

2.3. Any samples, drawings, descriptive matter or advertising issued by KES, and any descriptions or illustrations contained in KES' 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 trade, custom, practice or course of dealing.

2.5. Any quotation given by the KES shall not constitute an offer, and is only valid for the period stated within the quotation. Any order received based on an invalid quote may be refused.

2.6 KES will not work on an exclusive basis for the client, although all practical efforts will be made to ensure there is no conflict of interest.

3. Supply of Services

3.1. KES shall supply the Services to the Customer in accordance with the Specification in all material respects.

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

3.3. KES shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and KES shall notify the Customer in any such event.

3.4. KES warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5. KES shall maintain an agreed level of Professional Indemnity Insurance for the duration of any contract with the Customer, and shall provide the Customer with a copy of this insurance on request. KES shall make the Customer aware of any relevant exclusions that are imposed by the insurer.

4. Customer's Obligations

4.1. The Customer shall:

- a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- b) co-operate with KES in all matters relating to the Services;
- c) provide KES, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by KES;
- d) provide KES with such information and materials as KES may reasonably require in order to supply the Services, and ensure that such information is 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 before the date on which the Services are to start;
- g) keep and maintain all materials, equipment, documents and other property of KES ("Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to KES, and not dispose of or use the Supplier Materials other than in accordance with KES' written instructions or authorisation;
- h) comply with any additional obligations as set out in the Specification and Order.

4.2. If KES 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) KES shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays KES' performance of any of its obligations;
- b) KES shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from KES failure or delay to perform any of its obligations as set out in this Clause 4.2; and
- c) the Customer shall reimburse KES on written demand for any costs or losses sustained or incurred by KES arising directly or indirectly from the Customer Default.

5. Charges and Payment

5.1. The Charges for the Services shall be on a time and materials basis:

- a) the Charges shall be calculated in accordance with KES' standard daily fee rates as set out in the Order;
- b) KES' standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- c) KES shall be entitled to charge an overtime rate as detailed in the Order per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Clause 5.1.b); and
- d) KES shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom KES engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by KES for the performance of the Services, and for the cost of any materials.

5.2. KES reserves the right to increase its standard daily fee rates. KES will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify KES in writing within 2 weeks of the date of KES' notice and KES shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer.

5.3. Invoices shall be submitted in accordance with agreed milestones or intervals, and the following provisions in respect of payment of invoices shall apply to the parties:

5.4. The Customer shall pay each invoice submitted by KES:

- a) The due date for payment of the Invoice shall be specified on the invoice
- b), the amount of payment to be made by the Customer shall be the sum stated in the invoice.
- c) Sums due and owing to KES shall be paid in full and in cleared funds to a bank account notified by KES.

5.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by KES to the

Customer, the Customer shall, on receipt of a valid VAT invoice from KES, pay to KES such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6. If the Customer fails to make any payment due to KES under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). KES may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by KES to the Customer.

5.8 KES is a consultancy and therefore is outside the scope of HMRC's Construction Industry Scheme. No CIS deductions should be made.

5.9 KES shall at all times retain control of the work, and shall have the sole authority to appoint a substitute, decide or amend the working hours and to decide the location where the work takes place (except where the nature of the work dictates a specific location, such as a site survey). Therefore we do not fall within the intermediary legislation Chapter 10, Part 2 of the Income Tax (Earnings and Pensions Act) 2003 (commonly known as IR35).

6. Intellectual Property Rights

6.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by KES.

6.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on KES obtaining a written licence from the relevant licensor on such terms as will entitle KES to license such rights to the Customer.

6.3. Provided that the customer has paid all sums due to KES under the contract, The customer shall be granted a licence in perpetuity to use any photographs or imagery provided by KES under the contract for commercial or non-commercial purpose.

6.4. All Supplier Materials are the exclusive property of KES.

7. Limitation of Liability: The Customer's attention is particularly drawn to this clause

7.1. Nothing in the Contract shall limit or exclude KES' liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 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) or any other liability which cannot be limited or excluded by applicable law.

7.2. Subject to Clause 7.1, KES shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits and consequential losses

7.3. Subject to clause 7.1, KES' total liability to the Customer, 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 value of the Contract.

7.4. 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.

7.5. This Clause 7 shall survive termination of the Contract.

7.6. Notwithstanding any other provision in this agreement, KES' total liability under this agreement shall be limited to the value of the Services.

8. Termination

8.1. Without limiting its other rights or remedies, KES may terminate the Contract by giving the Customer 7 days written notice and the Customer shall pay KES fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of profits or any indirect or consequential loss.

8.2. Without limiting its other rights or remedies, KES may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- b) the Customer 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 [or, if the step or action is taken in

another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

c) the Customer 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 Customer'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.

8.3. For the avoidance of doubt, KES may terminate, without limiting its other rights or remedies, the Contract with immediate effect by giving written notice to the Customer if:

a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 3 days after being notified in writing to make such payment; or

b) there is a change of Control of the Customer.

8.4. Without limiting its other rights or remedies, KES may suspend provision of the Services under the Contract or any other contract between the Customer and KES if the Customer becomes subject to any of the events listed in Clause 8.2.b) to Clause 8.2.d) or KES reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9. Consequences of Termination

9.1. On termination of the Contract for any reason:

a) the Customer shall immediately pay to KES all of the KES's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the KES shall submit an invoice, which shall be payable by the Customer immediately on receipt;

b) the Customer shall return all of KES Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then KES 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 this Contract;

c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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; and

d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. Force Majeure

10.1. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11. General

11.1 KES may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

11.2. The Customer shall not, without the prior written consent of KES, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.3 The Customer consents to KES undertaking any investigation of The Customer (including but not limited to land ownership checks, credit checks, and company ownership and director searches) at any time before and during the contract; and may do so after completion or termination of the contract where there is a need to do so.

12. Confidentiality

12.1. Each party undertakes that it shall not at any time or at any time during the Contract, and for a period of 2 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 12.1

a) Each party may disclose the other party's confidential information 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 12; and

b) 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

12.2 Where KES are provided with private information about The Customer or their customers, suppliers, employees; KES will handle this information in accordance with the requirements of the UK General Data Protection Regulation.

12.3 Where KES obtain or receive private information about any third party not directly in contact with the Customer, KES will handle this information in accordance with the requirements of the UK General Data Protection Regulation and KES shall not share this information with the Customer except:

a) where the third party affected provides consent to do so.

b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

c) where it is demonstrably beneficial to the third party to do so. The third party will be informed that their data has been shared before (or as soon as practical after if necessary) it is provided to The Customer

d) where it is demonstrably detrimental to KES and The Customer not to do so, and in doing so the third party will not be inconvenienced, harmed or disadvantaged by doing so. The third party will be informed that their data has been shared before (or as soon as practical after if necessary) it is provided to The Customer.

13 Entire Agreement

13.1. This agreement 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.

13.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

14. Variation

14.1. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Waiver

15.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- a) waive that or any other right or remedy; or
- b) prevent or restrict the further exercise of that or any other right or remedy.

16. Severance

16.1. 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.

17. Notices

17.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

17.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

17.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.4. Third parties. No one other than a party to the Contract shall have any right to enforce any of its terms.

17.5. 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.

17.6. 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.