

TERMS AND CONDITIONS OF SUPPLY

1. **Interpretation**
 - 1.1. In these Terms:
 - "ACM" means ACM MANAGEMENT SOLUTIONS LIMITED (registered in England and Wales under company number 04419424);
 - "ACM'S Charges" means the charges shown on the Quotation Letter in accordance with the terms at Clause 3 hereof;
 - "ACM Material" means any Documents or other materials, and any data or other information provided by ACM relating to the Specified Service;
 - "Client" means the end user of the Specified Service and the person named on the Quotation Letter overleaf for whom ACM has agreed to provide the Specified Service in accordance with these Terms;
 - "Client Material" means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service;
 - "Contract" means the contract for the provision of the Specified Service;
 - "Document" includes, in addition to a document in Writing, a map, plan, design, site plan of the Premises, drawing, picture or other image visual or audio, or any other record of any information in any form;
 - "Inaccessible Areas" means any parts or areas of the Premises of which ACM have no knowledge, and/or where access to the Premises is limited by the presence of hazards or obstructions which include without limitation:
 - (i) flues, ducts, voids or any similarly enclosed areas, the access to which will necessitate the use of specialist equipment or tools;
 - (ii) lift shafts, plant rooms or similar which require the attendance of a specialist engineer unless arrangements have been specifically made for such an engineer to be in attendance;
 - (iii) any part or area of the Premises requiring specialist access equipment other than stepladders;
 - (iv) concealed spaces, which may exist within the fabric of the Premises where the extent or presence of these is not evident due to inaccessibility or insufficient knowledge or information supplied as to the structure; and
 - (v) voids (under floor, floor, wall or ceiling) other than those opened up during the site investigation
 - "Intellectual Property Rights" include but are not limited to copyrights, patents, utility models, trademarks, service marks, design rights (whether registered or unregistered), database rights and proprietary information rights;
 - "Premises" means any premises stated in the Quotation Letter at which the Specified Service is to be performed;
 - "Quotation Letter" means the quotation letter overleaf;
 - "Specified Service" means the service to be provided by ACM for the Client and referred to in the Quotation Letter and may include but without limitation either or a combination of: surveys to premises for asbestos containing materials; asbestos registers; material risk assessment or consultation and/or training;
 - "These Terms" means these terms and conditions and (unless the context otherwise requires) includes any special terms agreed in Writing between the Client and ACM;
 - "Writing" includes email, telex, facsimile transmission and other comparable means of communication.
 - 1.2. The headings in these Terms are for convenience only and shall not affect their interpretation.
2. **Supply of the Specified Service**
 - 2.1. ACM shall provide the Specified Service to the Client subject to these Terms.
 - 2.2. Any changes or additions to the Specified Service or these Terms must be agreed in Writing by ACM and the Client.
 - 2.3. The Client shall:
 - 2.3.1. at its own expense supply ACM with a site plan of the Premises and all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable ACM to provide the Specified Service in accordance with the Contract;
 - 2.3.2. ensure the accuracy of all Client Material; and
 - 2.3.3. at its own expense retain duplicate copies of all Client Material and insure against its accidental loss or damage. ACM shall have no liability for any such loss or damage, however caused. All ACM Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.
 - 2.4. ACM may create a site plan at the Premises if a site plan is not provided by the Client. ACM shall have no liability for failing to inspect any part of the Premises or for any loss or damage howsoever construed arising from the inaccuracy of the site plan provided by ACM.
 - 2.5. The Specified Service shall be provided in accordance with the Quotation Letter subject to these Terms.
 - 2.6. ACM warrants to the Client that the Specified Service will be provided using reasonable care and skill and, as far as reasonably possible and at the intervals and within the times referred to in the Quotation Letter.
 - 2.7. Inspection of Inaccessible Areas may not be possible and Inaccessible Areas are therefore excluded from any reports or registers as part of the Specified Service.
 - 2.8. The following shall apply in relation to ACM performing any survey or preparation of any report in relation to the Specified Service:
 - 2.8.1. Samples of materials are not taken by ACM where the act of sampling would endanger ACM or its employees, including, but without limitation, flash guards to fuse carriers within live electrical boxes, gaskets associated with heating and glazing or power plants;
 - 2.8.2. Items of bitumen, plastic, resin or rubber, which may contain asbestos, the thermal and acoustic properties of which are incidental to its main purpose, are excluded from the survey unless specifically stated in the Quotation Letter;
 - 2.8.3. Reference to materials as "Asbestos insulating Board" or "Asbestos Cement" are based upon their asbestos content and visual appearance alone. Density tests on materials are not carried out unless stated otherwise in the Quotation Letter;
 - 2.8.4. Where heating or services pipe work, and services or structural components are covered with a non-asbestos insulation, fire protection, or similar, only limited inspection is made of the underlying item or surface for evidence of any residue from any earlier or previous insulation etc. Removal of all non-asbestos insulation for the purposes of a full examination is specifically excluded, unless otherwise stated in the Quotation Letter.
 - 2.9. ACM may correct any typographical or other errors or omissions in any Document relating to the provision of the Specified Service without any liability to the Client.
 - 2.10. Any appointment of a third party by the Client in connection with the Specified Service (whether or not recommended by ACM) shall be an appointment by the Client directly and any such arrangement shall not create an agency relationship between the Client, ACM and the third party.
 - 2.11. ACM may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.
3. **Charges**
 - 3.1. The Client shall pay ACM's Charges at the time or times and in the manner as specified in the Quotation Letter.
 - 3.2. The Client shall pay to ACM any additional sums which are agreed between ACM and the Client for the provision of the Specified Service; or which, in ACM's sole discretion, are required, including but without limitation, as a result of the Client's instructions or lack of instructions, unexpected complications arising, the inaccuracy of any Client Material or any other cause attributable to the Client.
 - 3.3. The statement of ACM's Charges may at the sole discretion of ACM be revised upwards where unexpected complications or unforeseen circumstances arise provided that ACM gives prior notice in Writing to the Client of such revision.
 - 3.4. The ACM Charges are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the rate applicable from time to time.
 - 3.5. ACM shall at its own discretion be entitled to invoice the Client for the ACM Charges on an interim monthly basis or at the conclusion of the provision of the Specified Service.
 - 3.6. ACM's Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of ACM's invoice.
 - 3.7. If payment is not made on the due date, ACM shall be entitled, without limiting any other rights it may have:
 - 3.7.1. to suspend performance of the Specified Service until payment in full is made and ACM shall have no liability to the Client in respect of that suspension, nor in respect of any loss or damage caused to the Client as a result of it; and/or
 - 3.7.2. to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4 % above the base rate from time to time of Barclays Bank plc from the due date until the outstanding amount is paid in full.
4. **Intellectual Property Rights**
 - 4.1. The property and any copyright or other Intellectual Property Rights in:
 - 4.1.1. any Client Material shall (subject to the rights of any third party) belong to the Client
 - 4.1.2. any ACM Material shall belong to ACM but ACM shall assign to the Client any such property or other rights which it may have for no further consideration upon the completion of the Contract (unless terminated by ACM under clause 7) subject to payment in full of ACM's Charges and any additional sums payable.
 - 4.2. The Client warrants that any Client Material and its use by ACM for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify ACM against any loss, damages, costs, expenses or other claims arising from any such infringement.
 - 4.3. All Intellectual Property Rights in anything produced by ACM, including without limitation, these Terms, the Quotation Letter and any quotations or tender documents produced by ACM shall (subject to the provisions of clause 4.12) vest solely with ACM and may not be reproduced except without the express written authority of ACM.
5. **Liability**
 - 5.1. ACM shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Client Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
 - 5.2. Except in respect of death or personal injury caused by ACM's negligence, or as expressly provided in these Terms, ACM shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of ACM, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or their use by the Client.
 - 5.3. **THE LIABILITY OF ACM FOR ANY BREACH OR THE AGGREGATE LIABILITY FOR ANY SERIES OF BREACHES UNDER OR IN CONNECTION WITH THE CONTRACT SHALL NOT EXCEED THE AMOUNT OF PROFESSIONAL INDEMNITY INSURANCE THAT ACM HAS IN PLACE FROM TIME TO TIME.**
 - 5.4. ACM shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of ACM's obligations in relation to the Specified Service, if the delay or failure was due to any cause wholly or partly beyond ACM's reasonable control.
6. **Termination**
 - 6.1. No Contract which has been accepted by ACM may be cancelled by the Client except with the agreement in writing of ACM and on terms that the Client shall indemnify ACM in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by ACM as a result of the cancellation.
 - 6.2. Either party may (without limiting any other remedy) at any time terminate the Contract by giving notice in writing to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by notice in writing to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.
7. **General**
 - 7.1. These Terms (together with the additional terms, (if any), set out in the Quotation Letter) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in Writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
 - 7.2. These Terms (together with the additional terms, (if any), set out in the Quotation Letter) shall prevail over any terms put forward by the Client and no conduct by ACM shall constitute acceptance of any terms put forward by the Client unless ACM expressly agrees to them in Writing signed by a duly authorised representative
 - 7.3. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
 - 7.4. No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
 - 7.5. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
 - 7.6. The Contract shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English courts.