

STANDARD TERMS AND CONDITIONS FOR PLANT PROTECTION - WALES & WEST UTILITIES LIMITED (WWU)

These standard terms and conditions shall apply to Plant Protection Works undertaken by WWU on behalf of Client's unless separate WWU terms have been agreed between WWU and the Client. Where separate WWU terms have been agreed, those terms shall prevail over all other terms and conditions. The supplier's standard terms and conditions if any shall not apply.

The Supplier wishes to sell and the Customer wishes to purchase the Goods and/or Services on the terms set out in this Agreement.

1. BACKGROUND

- 1.1 [INSERT NAME OF COMPANY] (the "Client") has approached Wales & West Utilities Limited ("WWU") because the Client wishes to undertake certain works that will cross and/or be undertaken in close proximity to pipes owned and operated by WWU (the "WWU Pipelines").
- 1.2 In order to ensure the safety and integrity of the WWU Pipelines, the Client has instructed WWU to carry out the plant protection works (the "Plant Protection Works") in relation to the WWU Pipelines.
- 1.3 WWU has agreed to carry out the Plant Protection Works subject to the terms and conditions set out in this Agreement including any other communications sent by WWU relating to the scope of the Plant Protection Works (the "Agreement").
- 1.4 The terms and conditions in this Agreement apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. PLANT PROTECTION WORKS

- 2.1 WWU shall use its reasonable endeavours to carry out the Plant Protection Works in all material respects in accordance with:
- the scope of Plant Protection Works as agreed by the parties (the "Scope"); and
 - any performance dates agreed by the parties (the "Timetable"), but any such dates shall be estimates only and time shall not be of the essence for the performance of the Plant Protection Works.
- 2.2 WWU shall have the right to make any changes to the Plant Protection Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Plant Protection Works, and WWU shall notify the Client in any event.
- 2.3 The Client shall:
- co-operate with WWU in all matters relating to the Plant Protection Works;
 - provide WWU with such information and materials as WWU may reasonably require in order to undertake the Plant Protection Works, and ensure that such information is accurate in all material respects;
 - prepare the site where the Plant Protection Works will be undertaken;
 - provide WWU, its employees, agents, consultants and subcontractors, with access to the Client's premises and other facilities as reasonably required by WWU;
 - obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Plant Protection Works are to start;
 - keep and maintain all materials, equipment, documents and other property of WWU ("WWU Materials") at the Client's premises in safe custody at its own risk, maintain the WWU Materials in good condition until returned to WWU, and not dispose of or use the WWU Materials other than in accordance with WWU's written instructions or authorisation; and
- 2.4 If WWU's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- WWU shall without limiting its other rights or remedies have the right to suspend performance of the Plant Protection works until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays WWU's performance of any of its obligations;

- WWU shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from WWU's failure or delay to perform any of its obligations as set out in this clause; and

- the Client shall reimburse WWU on written demand for any costs or losses sustained or incurred by WWU arising directly or indirectly from the Client Default.

3. CHARGES AND PAYMENT

- 3.1 In consideration of the performance of the Plant Protection Works by WWU, the Client shall pay WWU the amounts agreed by the parties ("the "Charges").
- 3.2 The Charges for the Works shall be calculated in accordance with WWU's standard hourly rates as communicated to the Client.
- 3.3 WWU shall invoice the Client or as otherwise agreed with the Client.
- 3.4 The Client shall pay each invoice submitted by WWU:
- within 30 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by WWU; and
- time for payment shall be of the essence.

- 3.5 All amounts payable by the Client under this Agreement 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 Agreement by WWU to the client, the Client shall, on receipt of a valid VAT invoice from WWU, pay to WWU such additional amounts in respect of VAT as are chargeable at the same time as payment is due under clause 3.3.
- 3.6 If the Client fails to make any payment due to WWU under this Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of [3%] per cent per annum above the base rate of Barclays Bank plc 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 Client shall pay the interest, together with the overdue amount.

4. LIMITATION OF LIABILITY

- 4.1 Subject to clauses 4.1, 4.2 and 4.3 WWU's liability to the Client pursuant to this Agreement in respect of any indemnity, breach of this Agreement or breach of statutory duty, claims in tort (including negligence) or otherwise shall be limited to the amount the Client has paid WWU pursuant to this Agreement.
- 4.2 WWU's liability for any actions, claims, demands and costs, charges and expenses in respect of loss or damage to property shall be limited to £250,000.
- 4.3 Notwithstanding any other provision of this Agreement, WWU accepts and does not seek to limit or exclude its liability for death or personal injury caused by reason of its negligence.
- 4.4 Under no circumstances whatsoever shall WWU be liable for any consequential loss of any description or any loss of profit, loss of opportunity, loss of goodwill or pure economic loss.

5. TERMINATION

- 5.1 Without limiting its other rights or remedies, WWU may terminate this Agreement by giving the other party 1 month's written notice.
- 5.2 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of this Agreement 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;
 - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of

section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom the foregoing apply;

- the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that party;
- the other party (being an individual) is the subject of a bankruptcy petition or order;
- a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or such other process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect or equivalent or similar to any of the events mentioned in clause 5.1(b) to 5.1(i) (inclusive);
- the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- the other party's financial position deteriorates to such an extent that in WWU's opinion, the Client's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy; or
- the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 5.3 Without limiting its other rights or remedies, WWU may terminate this Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within [number] days after being notified in writing to do so.

- 5.4 Without limiting its other rights or remedies, WWU may suspend provision of the Works under this Agreement if the Client becomes subject to any of the events listed in clause 5.1(b) to clause 5.1(m), or WWU reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Agreement on the due date for payment.

6. CONSEQUENCES OF TERMINATION

- 6.1 On termination of this Agreement for any reason:
- the Client shall immediately pay to WWU all of WWU's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has been submitted, WWU shall submit an invoice, which

shall be payable by the Client immediately on receipt;

- (b) the Client shall return all of the WWU Materials. If the Client fails to do so, then WWU may enter into the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (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 Agreement 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.

7. GENERAL

7.1 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

7.3 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

7.4 **Third party rights.** Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, part from that Act.

7.5 **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

7.6 **Force majeure.** WWU shall not be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond WWU's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

7.7 Severance

- (a) If any provision or part-provision of this Agreement 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 this Agreement.
- (b) If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

7.8 Waiver

- (a) A waiver of any right or remedy under this Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

7.9 **Notices.** Any notice served by either party under this Agreement shall be in writing and shall be served by sending the same by prepaid first class post or by delivering the same by hand to the address of the relevant recipient set out in this Agreement. Any notice so rendered shall be deemed to have been served, if delivered by hand, at the time of such delivery and, if sent by post, 48 hours after the time of despatch. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

7.10 Entire agreement

- (a) 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.

- (b) 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.