

UTILITY CONNECTIONS (UK) LIMITED – CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

- 1.1 **"Utility Connections "** means Utility Connections (UK) Limited (company number 0693185) whose registered office is at Vale House, Aston Lane North, Preston Brook, WA7 3PE and includes Utility Connections' successors and permitted assigns.
- 1.2 **"Client"** means the person firm or company which has accepted the attached Quotation ("the Quotation") and includes the Client's legal personal representatives its successors and permitted assigns.
- 1.3 **"Contract"** means the acceptance by the Client of the Quotation and these Conditions of Contract together with any amendments made thereto which are agreed in writing by the parties hereto in accordance with Condition 11.
- 1.4 **"Contract Price"** means the sum(s) (including any third party expenses and disbursements) to be paid by the Client to Utility Connections as detailed in the Quotation and agreed to be paid by the Client under the Contract.
- 1.5 **"Information"** means the information and advice given by Utility Connections to the Client (which may be by way of report, letter or orally or a combination thereof) pursuant to the Services to be performed by Utility Connections.
- 1.6 **"Quotation"** means the written offer made by Utility Connections to provide the Services at the price(s)/rate(s) set out therein.
- 1.7 **"Services"** means, subject to Condition 2.2, the activities to be performed in accordance with the Contract described in the Quotation and agreed by the Client and any modification thereof as may from time to time be agreed in writing between the parties hereto in accordance with Condition 11.
- 1.8 **"Site"** means the property in which the Client has an interest in respect of which Utility Connections performs the Services.
- 1.9 In this Contract:
- 1.9.1 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9.2 Words in the singular include the plural and in the plural include the singular.
- 1.9.3 A reference to one gender includes a reference to the other gender.
- 1.9.4 Condition headings do not affect the interpretation of these conditions.

2. INFORMATION

- 2.1 Subject to Condition 2.2, Utility Connections shall provide the Information to the Client (which may be in writing or orally) setting out the advice and information required by the Client in connection with the Services.
- 2.2 If the Quotation refers to investigations of the Site and unless the Quotation expressly provides otherwise:
- 2.2.1 the Information (if it is to include an investigation of the Site) shall be limited to a desktop investigation of the Site whereby Utility Connections agrees to liaise with such utility providers as it reasonably deems fit to determine the extent of the utilities on the Site.
- 2.2.2 Utility Connections shall not undertake a physical investigation of the Site nor any information on any intangible matters such as easements or wayleaves. In any event, any physical investigation of the Site shall relate to the surface of the Site only and shall not extend, without limitation, to any investigation of that which may be contained below the surface of the Site.
- 2.2.3 Utility Connections shall not undertake, without limitation, any title investigations including but not limited to any legal investigations, enquiries or searches (whether pre- or post- exchange) or any investigations, enquiries or searches (whether pre- or post- exchange) which would normally be undertaken on the sale or purchase of the Site.
- 2.3 If any advice or information is provided orally by Utility Connections to the Client pursuant to the Services such information or advice shall not be relied on and shall be deemed not to have been given unless confirmed in writing.
- 2.4 The Information is produced for the sole benefit of the Client for use within its own internal organisation may be copied for these purposes only. If the contents of the Information are divulged by the Client to third parties it shall be at the sole risk and responsibility of the Client and the Client shall indemnify Utility Connections against any losses costs claims damages and expenses made by the third party against Utility Connections in respect of the Information.
- 2.5 All copyright and other intellectual property rights in the Information and all documents (including, but not limited to, drawings, working notes and books) transparencies, prints, photographs, negatives, tapes, disks software information or other items created or supplied by Utility Connections to the Client shall remain vested in Utility Connections.
- 2.6 The Client shall not reproduce or abstract the Information for advertising issuing publicity releases or announcements or otherwise or use the name of Utility Connections either expressly or by implication in any of its advertising or sales promotional material or in any other way make disclosure of the activities of Fuel Solutions in connection with the Contract without the prior written consent of Utility Connections.

3. LIABILITY

- 3.1 The following provisions set out the entire financial liability of Utility Connections (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 3.1.1 any breach of this Contract;
- 3.1.2 any of the Information by the Buyer or any third parties; and
- 3.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 3.2 All warranties, conditions and other terms implied by statute or common law (save for the provisions implied by section 13 and section 14 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 3.3 Nothing in this Contract excludes or limits the liability of Utility Connections:
- 3.3.1 for death or personal injury caused by Utility Connections' negligence; or
- 3.3.2 for any matter which it would be illegal for Utility Connections to exclude or attempt to exclude its liability; or
- 3.3.3 for fraud or fraudulent misrepresentation.
- 3.4 Subject to Condition 3.2 and Condition 3.3:
- 3.4.1 Utility Connections' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the sum of fifty thousand pounds sterling (£50,000) or ten times the amount of the Contract price (as set out in the Quotation) whichever is the lower; and
- 3.4.2 Utility Connections shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 3.5 Utility Connections shall not be liable for the consequences of any advice or information given or contained in any Information unless a claim is notified to it in writing within one year from the date the Information is delivered to the Client.

4. CLIENT'S RESPONSIBILITIES

- 4.1 The Client represents, warrants and undertakes that all information given by it in connection with this Contract (or by any agents or representatives of it) to Utility Connections shall, so far as it is aware having made all due and careful enquiries, be true, accurate and complete in every respect. If the Client is aware or becomes aware that any all information given by it in connection with this Contract (or by any agents or representatives of it) to Utility Connections is untrue, inaccurate or incomplete it shall promptly disclose the same to Utility Connections. The Client shall indemnify Utility Connections from and against any claims losses costs damages and expenses suffered by Utility Connections as a consequence of the breach of this Condition 4.1.
- 4.2 If Utility Connections performs the Services at the Site the following related facilities and works shall be provided by and at the expense of the Client:
- 4.2.1 access to the Site at all reasonable times;
- 4.2.2 health and safety facilities in accordance with applicable statutory provisions;
- 4.2.3 all necessary excavation, coring, scaffolding or other engineering equipment reasonably required by Utility Connections for the performance of the Services;
- 4.2.4 temporary electric power for power-driven tools and for the testing or calibration of any instruments; and
- 4.2.5 the obtaining and production to Utility Connections on demand of all necessary licences, authorisations or permissions whatsoever from the Client, any land owner, government department or local or public or other authority for the performance of the Services

and the Client shall indemnify Utility Connections from and against any claims losses costs damages and expenses suffered by Utility Connections as a consequence of the breach of this Condition 4.2.

- 4.3 The Client shall be liable for any damage to or loss of equipment delivered to the Site except where such damage or loss is caused by Utility Connections' negligence.

5. QUALITY OF THE SERVICES

In carrying out the Services, Utility Connections shall use the standard of skill and care which is ordinarily exercised by experienced competent contractors performing services in the industry.

6. PAYMENT

- 6.1 Subject to the Condition 11.2 the Client shall pay to Utility Connections without set-off, deduction, abatement or otherwise at the address stated in Condition 13 (or such other address as the Client may reasonably state from time to time) the sum(s) stated in the detailed priced invoice or invoices submitted by Utility Connections in accordance with the Contract.
- 6.2 Unless otherwise specified in the Contract, payment of the Contract Price of part thereof shall be made within 28 days of receipt by the Client of Utility Connections' invoice in respect of the Services failing which and without prejudice to any other right relief or remedy of Utility Connections such sum(s) shall bear interest additionally payable to the Client at the rate of two (2) percentage points above the Barclays Bank plc base rate in force from time to time accruing on a daily basis until payment is made, whether before or after any judgment. Utility Connections reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.3 All sums payable under the Contract shall be exclusive of value added tax and other duties or taxes. Any value added tax or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.
- 6.4 The Client shall, unless otherwise specified in the Contract, make payment in pounds sterling.
- 6.5 No payment shall be deemed to have been received until Utility Connections has received cleared funds.

7. HEALTH AND SAFETY AND THE ENVIRONMENT

- 7.1 Each party shall comply with the following provisions of Condition 7 in addition to any other requirements of the Contract concerning health and safety and nothing herein shall derogate from the obligations of each of the parties to comply with its respective statutory responsibilities insofar as they relate to the Services.
- 7.2 Each party shall in relation to all persons affected or likely to be affected by the performance of the Services take such steps as are reasonably practicable to ensure their health and safety.
- 7.3 Where equipment plant or materials are provided by the Client the Client shall carry out such tests and examinations thereof as may be necessary to ensure the health and safety of anyone who is in or is likely to come into contact with or otherwise be affected by the use of such items.
- 7.4 The Client shall make available for inspection to Utility Connections at all times all registers records and any other documentation concerning health and safety and/or environmental matters which relate to the interests of the Client in respect of the Client or others affected by the Services.
- 7.5 The Client shall send to Utility Connections a copy of every notice or other communication received from or sent to any person or body concerning health and safety and/or environmental matters and relating to the interests of the Client in respect of the Client or others affected by the Services.

8. ASSIGNMENT & SUBLETTING

- 8.1 The Client shall not assign the Contract in whole or in part or any benefit or interest therein without the prior written consent of Utility Connections.
- 8.2 Utility Connections may assign or otherwise transfer the Contract in whole or in part or any benefit or interest therein to any party by written notice to the Client.
- 8.3 The Client shall not sub-contract the whole or any part of the Contract without the prior consent of Utility Connections.

9. FORCE MAJEURE

- 9.1 Neither party shall be liable for delays or non-performance of the Contract due to fire, explosion, strikes, lock-outs, or other labour disputes, hostilities, flood, acts of terrorism, war, rebellion, acts of God, acts of Government, acts of third parties, riot, sabotage, accidents or other occurrences not within the affected party's reasonable control provided that, if the event in question continues for a continuous period in excess of 90 days, either party shall be entitled to give notice in writing to the other to terminate the Contract..
- 9.2 The party affected by such an occurrence shall promptly give written notice to the other thereof.
- 9.3 Each party shall be liable for and shall bear all of its own costs, expenses, losses and charges suffered and incurred as a result of any such occurrence.

10. VARIATIONS

- 10.1 Subject to the written agreement of Utility Connections the Client may from time to time to vary the Services until the Information has been issued or until earlier termination of the Contract.
- 10.2 No such variation shall be agreed unless and until the parties have agreed any adjustment (if any) to the Contract price.

11. TERMINATION

- 11.1 Utility Connections may terminate the Contract forthwith if:
- 11.1.1 the Client fails to make punctual payment of all sums due to Utility Connections under the terms of this Contract;
- 11.1.2 the Client has a bankruptcy order made against him or her or makes an arrangement or composition with his or her creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client, or the Client suffers or allows any execution, whether legal or equitable, to be levied on his, her or its property or obtained against him, her or it, or fails to observe or perform any of his, her or its obligations under the Contract or any other contract between Utility Connections and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade.
- 11.2 In the event of this Contract being terminated in accordance with Condition 12.1 the Client shall immediately pay to Utility Connections all arrears of any sums due under the terms of this Contract, and
- 11.3 Any such termination shall be without prejudice to the rights and liabilities of Utility Connections accruing up to the date of termination.

12. NOTICES

A notice shall be validly given if delivered by hand or sent by telefax facsimile or recorded delivery post to the address of the relevant party being such address as shall have been notified by each party to the other (in the case of Utility Connections Vale House, Aston Lane North, Preston Brook, WA7 3PE until notified otherwise). Any notice sent by telefax or facsimile shall be deemed to have been served at the time of transmission. A notice sent by post shall be deemed to have been served for four days after posting.

13. DATA PROTECTION

- 13.1 Acceptance of the terms of this Contract includes the Client's consent to Utility Connections retaining and processing data about the Client (including to provide the Client with information about Utility Connections' services).
- 13.2 Utility Connections may carry out credit checks with one or more licensed credit reference agencies or other referee notified to it and it will in such case retain a record of the search and reference.
- 13.3 The Client is entitled to write to Utility Connections and obtain a copy of the data held about it upon payment of a fee and to request that any information about Utility Connections' services is not sent to it. If any data is incorrect the Client may request rectification.

14. GENERAL

- 14.1 Each right or remedy of Utility Connections under the Contract is without prejudice to any other right or remedy of Utility Connections whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by Utility Connections in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by Utility Connections of any breach of, or any default under, any provision of the Contract by the Client shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15. GOVERNING LAW AND DISPUTES

- 15.1 The Contract shall be governed by and construed in accordance to English law.
- 15.2 In respect of any dispute under or arising out of the contract Utility Connections and the Client hereby agree to submit to the exclusive jurisdiction of the English courts.