

## 1 Interpretation

1.1 In these Conditions, the following definitions apply:

**Business Day** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Conditions** these terms and conditions as amended from time to time in accordance with clause 13.2;

**Confidential Information** means any information which the disclosing party notifies to the receiving party at the time of disclosure to be confidential or information which the receiving party ought reasonably to have known is confidential whether expressly told so or not by the disclosing party provided that any confidential information which is already in the public domain (not otherwise in breach of this clause) or already known to the receiving party shall not constitute confidential information, including, without limitation, any information relating to the systems, operations, plans, intentions, market opportunities, potential and actual customers, surveys, know-how, trade secrets and business affairs in whatever form;

**Consultant** means Oceans ESU Limited registered in England and Wales with company number 02683741;

**Contract** the contract between the Consultant and the Customer for the supply of Services and/or Goods in accordance with these Conditions;

**Customer** the person or firm who purchases Services and/or Goods from the Consultant;

**Customer Default** has the meaning set out in clause 5.2;

**Deliverables** the deliverables set out in the Proposal, including for the avoidance of doubt the design of the Reed Bed and any Goods;

**Fees** the fees payable by the Customer for the supply of the Services and/or Goods in accordance with clause 6;

**Goods** means any goods which may be agreed to be supplied by the Consultant to the Customer, as set out in the Proposal, or as otherwise agreed by the parties in writing from time to time;

**Intellectual Property Rights** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled; and (f) in whichever part of the world existing;

**Personal Data** means identity and contact data of individuals such as names, titles and other identifiers together with business addresses, email addresses and telephone numbers.

**Proposal** means the specification outlining the Deliverables, issued by the Consultant to the Customer;

**Purchase Order** means the Customer's written acceptance of the Services as set out in the Proposal, issued by the Customer to the Consultant;

**Reed Bed** means the engineered waste water treatment system, designed by the Consultant;

**Routine Maintenance** means, if any, the standard maintenance services provided by the Consultant to the Customer, as set out in the Proposal or as otherwise agreed in writing from time to time, including but not limited to, checking Reed Bed health, adjusting water levels of the Reed Bed and clearing pipework; and

**Services** the services, including the Deliverables, supplied by the Consultant to the Customer as set out in the Proposal, or as otherwise agreed by the parties in writing from time to time.

1.2 In these Conditions, unless the context otherwise requires:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision 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;

1.2.4 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; and

1.2.5 a reference to **writing** or **written** includes e-mail.

## 2 Basis of Contract

2.1 These Conditions apply to and form part of the Contract between the Consultant and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 A Purchase Order constitutes an offer by the Customer to purchase the Services and/or Goods in accordance with these Conditions, on the basis of the Proposal, or where there is no formal Proposal, on the basis otherwise agreed in writing by the parties. The Purchase Order shall only be deemed accepted when the Consultant accepts the Purchase Order in writing, at which point, the Contract shall come into existence.

2.3 The Proposal is provisional and may be altered by the Consultant at any time to comply with any applicable law or regulatory requirement, to take account of any changes in the Customer's specification, or any changes in the construction or design of the Reed Bed which the Consultant reasonably determines is required following any testing or other investigations, or in the price of raw materials and other costs of production, or if the amendment will not materially adversely affect the nature or quality of the Reed Bed, and the Consultant shall notify the Customer of such alteration in any such event.

2.4 Any drawings, diagrams, descriptive matter or advertising issued by the Consultant, and any descriptions or illustrations contained in the Consultant's 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.

2.5 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.

## 3 Supply of Services

3.1 The Consultant shall supply the Services to the Customer in accordance with the Proposal (or, if none, such other terms agreed in writing by the parties) in all material respects.

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

3.3 The Consultant warrants to the Customer that the Services shall be provided using reasonable care and skill.

3.4 The Customer acknowledges that: (i) the Consultant is not responsible for the construction of the Reed Bed; (ii) the Consultant provides no guarantee that the Reed Bed will meet all of the Customer's requirements. By its nature, the performance of the Red Bed will be subject to a number of variable factors including the volume and type of effluent and the environment in which it is situated. The Consultant shall use reasonable efforts to design the Reed Bed to meet the Customer's requirements based on its knowledge of the environment and other pertinent factors; and, (iii) the Consultant is not liable if its design for the Reed Bed produced during the Services, is not followed correctly by a third-party contractor.

3.5 Where Reed Bed trials are carried out by the Consultant, if the results of those trials conclude that a Reed Bed is not suitable for the Customer, the Consultant shall not be obliged to continue to carry out the Services. Where those trials

indicate that more work under the Services is required than initially communicated in writing to the Customer, the Consultant reserves the right to amend the Proposal and the Fees accordingly.

3.6 Unless expressly agreed otherwise, if the Proposal does not include Routine Maintenance, the Customer shall be responsible for all maintenance, care and repairs in respect of the Reed Bed from the point that the Reed Bed is accepted by the Customer, at which point the Consultant shall have no further responsibility for the Reed Bed.

3.7 Any maintenance required by the Customer for the Reed Bed which falls outside the scope of Routine Maintenance (for example, any repair work or the purchase of any spare parts), must be agreed by the Consultant in writing, and will be carried out at the Customer's cost, unless otherwise agreed.

**4 Supply of Goods**

4.1 On delivery, the Goods shall (i) conform with their description; and (ii) be free from material defects in design, material and workmanship.

4.2 Where the Consultant provides any Goods, all Goods will remain in the Consultant's ownership until it has received payment in full in respect of them from the Customer. Until ownership of the Goods has passed to the Customer pursuant to this clause, the Customer shall: (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Consultant's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (d) notify the Consultant immediately if it becomes subject to any of the events listed in clauses 10.1.3 to 10.1.5; and (e) give the Consultant such information relating to the Goods as the Consultant may require from time to time. Notwithstanding anything in this clause 4, the Customer may use the Goods in the ordinary course of installation and use of the Reed Bed before the Consultant receives payment.

4.3 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 10.1.3 to 10.1.5, then, without limiting any other right or remedy the Consultant may have: (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and (b) the Consultant may at any time: (i) require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

4.4 The risk in the Goods shall pass to the Customer on completion of delivery.

**5 Customer's Obligations**

5.1 The Customer shall:

5.1.1 ensure that the terms of the Purchase Order and Proposal, and any information it provides to the Consultant at any time, including prior to or after its receipt of the Proposal, are complete and accurate, and shall notify the Consultant promptly upon discovering any inaccuracy or deficiency in respect of the same;

5.1.2 co-operate with the Consultant in all matters relating to the Services and/or Goods;

5.1.3 provide the Consultant, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Consultant;

5.1.4 provide the Consultant with such information, data and materials as the Consultant may reasonably require, at its own cost, in order to supply the Services and/or Goods, and ensure that such information and data is complete and accurate in all material respects,

and that all sample data is representative of the data to which it relates;

5.1.5 prepare the Customer's premises for the supply of the Services and/or Goods;

5.1.6 unless otherwise agreed, obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

5.1.7 comply with all applicable laws, including environmental and health and safety laws;

5.1.8 keep all materials, equipment, documents and other property of the Consultant (**Consultant Materials**) at the Customer's premises in safe custody at its own risk, maintain the Consultant Materials in good condition until returned to the Consultant, and not dispose of or use the Consultant Materials other than in accordance with the Consultant's written instructions or authorisation;

5.1.9 where approval from the Customer is required by the Consultant in respect of any drawings, reports, recommendations, tender documents or other matters, give that decision to the Consultant within 5 Business Days of the Consultant's request, unless agreed otherwise;

5.1.10 ensure that it complies with the Consultant's specific requirements as set out in the Proposal, or as otherwise communicated to the Customer in writing; and

5.1.11 comply with any additional obligations as set out in the Proposal.

5.2 If the Consultant's 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, or the Customer does not pay in full any invoice of the Consultant when due pursuant to clause 6 (**Customer Default**):

5.2.1 without limiting or affecting any other right or remedy available to it, the Consultant shall 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 in each case to the extent the Customer Default prevents or delays the Consultant's performance of any of its obligations;

5.2.2 the Consultant shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Consultant's failure or delay to perform any of its obligations as set out in this clause 5.2; and

5.2.3 the Customer shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Customer Default.

**6 Fees and Payment**

6.1 Unless agreed otherwise between the parties, the Fees for the Services and/or Goods shall be as set out in the Proposal, subject to alteration if there are any changes or additions to the design or scope of the Deliverables specified in the Proposal (or any increase in the cost of raw materials).

6.2 The Consultant shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Consultant engages in connection with the Services and/or Goods including travelling expenses (including visas), site permits, training, accommodation, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Consultant for the performance of the Services, and for the cost of any materials.

6.3 Unless otherwise agreed in writing, the Fees are exclusive of VAT and of all costs, expenses, charges and where applicable, import duties and taxes, associated with the performance of the Services and supply of the Goods.

- 6.4 The Customer shall pay any applicable VAT to the Consultant on receipt of a valid VAT invoice.
- 6.5 The Consultant shall invoice the Customer in respect of each stage of the Services following completion of each such stage, unless otherwise stated in the Proposal.
- 6.6 Time of payment is of the essence. The Customer shall pay each invoice submitted by the Consultant:
- 6.6.1 in full without deduction or set off, in cleared funds within 30 days of the date of each invoice; and
- 6.6.2 to the bank account nominated by the Consultant.
- 7 Intellectual Property Rights**
- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Consultant.
- 7.2 For the purpose of allowing the Customer to use the Services and/or Goods under this Contract, the Consultant hereby grants to the Customer a non-exclusive, non-transferable, royalty free licence to use the Intellectual Property Rights in the Deliverables.
- 7.3 The Customer shall not make copies of any of the materials in the Deliverables provided by the Consultant, without the prior written consent of the Consultant.
- 8 Data Protection**
- 8.1 Both parties will collect Personal Data relating to the other party and / or its employees or staff in the course of providing / receiving the Services. This is used by both parties to manage the relationship between them, and by the Consultant for the provision of the Services. The use of Personal Data for this purpose is necessary for the performance of the contract that will be in place between the Customer and the Consultant and for both the Consultant's and the Customer's legitimate interests in managing that contract. For further information about how the Consultant handles Personal Data, please refer to its Privacy Policy: [www.oceans-esu.com/privacy](http://www.oceans-esu.com/privacy)
- 9 Limitation of Liability**
- 9.1 Subject to clauses 9.2 and 9.3, the Consultant's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to an amount equal to 150% of the Fees.
- 9.2 Subject to clause 9.3, the Consultant shall not be liable for any of the following:
- 9.2.1 any direct loss of profit;
- 9.2.2 any loss of anticipated profit including loss of profit on contracts;
- 9.2.3 any loss of anticipated savings;
- 9.2.4 any loss of business, contracts or opportunity in each case whether direct or indirect;
- 9.2.5 any loss of goodwill or reputation in each case whether direct or indirect; or
- 9.2.6 any indirect, special or consequential loss or damage however caused including:
- 9.2.6.1 any indirect loss of profit; or
- 9.2.6.2 any indirect loss of anticipated profit; or
- 9.2.6.3 any indirect loss of anticipated savings; or
- 9.2.6.4 loss of use of money or revenue; or
- 9.2.6.5 loss of data; or
- 9.2.6.6 any other special, indirect or consequential loss,
- and the parties agree that the categories of loss as referred to at this clause 9.2 shall be distinct and severable.
- 9.3 Notwithstanding any other provision of the Contract, the liability of the parties shall not be excluded or limited in any way in respect of the following:
- 9.3.1 death or personal injury caused by negligence;
- 9.3.2 fraud or fraudulent misrepresentation;
- 9.3.3 s2 of the Supply of Goods and Services Act 1982; or
- 9.3.4 any other losses which cannot be excluded or limited by applicable law.
- 10 Termination**
- 10.1 Without affecting any other right or remedy available to it, the Consultant may terminate the Contract at any time by giving written notice to the Customer if:
- 10.1.1 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 30 days after being notified in writing to do so by the Consultant;
- 10.1.2 the Customer fails to make any payment of the Fees or part thereof on the due date for payment and fails to remedy such late payment within fourteen days from the due date;
- 10.1.3 the Customer takes any step or action in connection with its entering administration, 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 anything similar or analogous to any of the foregoing occurs in any jurisdiction;
- 10.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.5 the Customer's financial position deteriorates to such an extent that in the Consultant's reasonable and good faith opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, the Consultant may suspend the supply of Services and/or Goods under the Contract or any other contract between the Customer and the Consultant if the Customer becomes subject to any of the events listed in clauses 10.1.3 to 10.1.5, or the Consultant 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.
- 10.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Consultant to terminate the Contract under this clause 10, it shall immediately notify the Consultant in writing.
- 10.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Consultant at any time up to the date of termination.
- 10.5 If the Customer requests the Consultant to suspend or delay performance of the Contract, the Consultant reserves the right to invoice for work already completed and materials purchased.
- 11 Force Majeure**
- 11.1 A party shall not be liable if delayed in or prevented from performing its obligations due to a Force Majeure Event, provided that it promptly notifies the other of the Force Majeure Event and its expected duration and uses reasonable endeavours to minimise the effects of that event.
- 11.2 A **Force Majeure Event** means an event beyond a party'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, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosion, collapse of building

structures, fire, flood, storm, earthquake, loss at sea, epidemic or similar events, natural disasters or extreme adverse weather conditions or default of suppliers or subcontractors.

- 11.3 If, due to a Force Majeure Event, a party is or shall be unable to perform a material obligation or is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days, the other party may, within 30 days, terminate the Contract on immediate notice the parties shall, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

## 12 Confidentiality

- 12.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, Customers or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

- 12.2 Each party may disclose the other party's Confidential Information:

12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and

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

- 12.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 13 General

- 13.1 The Consultant may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- 13.2 No amendment or variation of these Conditions will be valid unless agreed in writing by an authorised signatory of each party.

- 13.3 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Consultant's prior written consent, which it may withhold or delay at its absolute discretion.

- 13.4 Any notice given by a party under these Conditions shall be in writing, be signed by, or on behalf of the party giving it, and be sent in the case of the Consultant to Oceans ESU Ltd, The Business Village @BarnsleyBIC, Innovation Way, Barnsley, S75 1JL and to the Customer, at its registered office. Notices are deemed received if delivered by hand, when left at the address referred to in the Contract; 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; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. All references to time are to the local time at the place of deemed receipt. The provisions of this clause 13.4 does not apply to notices given in legal proceedings or arbitration

- 13.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 13.6 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

- 13.7 A waiver of any right or remedy under the Contract or at law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

- 13.8 A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 13.9 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).