

TERMS AND CONDITIONS

Client	means the person, firm or company named in the Order as the client;
Contract	means the agreement, subject to the Terms, between the Client and the Surveyor for the supply of Services;
USL	means 'underground service location', a service provided by the Surveyor which utilises various technologies to locate underground pipes and cables;
Order	means the Client's written request for the supply of Services;
Report	means a report produced by the Surveyor for the Client relating to the subject matter of the Services;
Services	means the services set out in the Order to be supplied by the Surveyor to the Client;
Site	means the location where Services are to be undertaken by the Surveyor as specified in the Order;
Surveyor	means EDI Surveys Ltd, 163 Ranelagh Road, Ipswich, Suffolk IP2 0AH
Terms	means the standards terms and conditions of business set out in this document;

Unless the context otherwise requires:

- each gender includes the others;
- the singular includes the plural and vice versa;
- references to the Contract includes the Terms, the Order and its schedule (if any);
- references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- clause headings do not affect their interpretation;
- general words are not limited by example; and
- references to legislation include any modification or re-enactment thereof.

1 The Order and incorporation of the Terms

- 1.1 An Order will be deemed to be an offer to purchase Services from the Surveyor on the Terms of the Contract.
- 1.2 Orders are not binding until accepted by the Surveyor in writing.
- 1.3 Quotations issued by the Surveyor are valid for 60 days from issue. They do not constitute an offer to sell or supply. If the Client wishes to purchase Services the subject of a quotation, it will need to place an Order.
- 1.4 Marketing and other descriptive matters relating to Services are illustrative only, and do not form part of the Contract. The Client agrees that, in placing an Order, it has not relied on any representation or statement by the Surveyor not set out in the Contract.
- 1.5 These Terms alone will apply to (and will form part of) the Contract for the supply of the Services by the Surveyor to the Client. They supersede any previously issued terms and conditions of supply.
- 1.6 No terms or conditions endorsed on, delivered with, or contained in the Client's Order, confirmation of order, specification or other document will form part of the Contract unless agreed by the Surveyor in writing.
- 1.7 No variation of the Terms or to an Order, or to a quotation from the Surveyor will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Surveyor.

2 Price and payment

- 2.1 The price for the Services will be as set out in the Order and shall be in pounds sterling unless otherwise stated. The price does not include Value Added Tax unless otherwise stated, which shall be payable at the rate applicable at the time of invoice.
- 2.2 Unless otherwise agreed in writing by the Surveyor, the price shall be inclusive of:
 - 2.2.1 a 30 minute site induction and the Surveyor reserves the right to make a reasonable charge if the site induction exceeds 30 minutes;
 - 2.2.2 electronic copies of the Report and up to two hard copies of the Report provided that they are requested in the Order or ordered within 60 days of the date of the Report. The Surveyor nevertheless reserves the right to charge carriage for hard copies.
- 2.3 The Surveyor reserves the right to charge for any hard copies of the Report which are not ordered in accordance with clause 3.2.2.
- 2.4 The price is payable in full on completion of the Services unless installments or pre-payments have been otherwise agreed in writing by the Surveyor.
- 2.5 Self-billing arrangements shall not apply to any Services provided by the Surveyor.
- 2.6 The Client will pay all invoices (unless disputed in good faith):
 - 2.6.1 in full, without deduction or set-off other than as required by law, in cleared funds within 28 days of receipt of invoice and time for payment is of the essence;
 - 2.6.2 all costs and expenses, if any, connected with the conversion of a foreign currency into pounds sterling by the Client shall be the responsibility of the Client.
- 2.7 Where sums due hereunder are not disputed in good faith and are not paid in full by the due date:
 - 2.7.1 the Surveyor may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of National Westminster Bank Plc from time to time in force;
 - 2.7.2 interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

3 Provision of services

- 3.1 The Surveyor will provide the Services to the Client in accordance with the Contract and the Order.
- 3.2 The Services will begin on the date agreed between the Client and the Surveyor.
- 3.3 The Surveyor will use all reasonable endeavours to meet any milestone dates agreed between the Client and the Surveyor.
- 3.4 The Surveyor will not be liable for any delay in or failure of performance of the Services (including any failure to achieve any milestone or other date) so far as caused by an event of Force Majeure or the Client's failure to perform its obligations under the Contract.
- 3.5 The Surveyor will not be obliged to perform any tasks or work not specified in the Order and the Surveyor reserves the right to charge for any additional work which is outside the scope of the agreed Services.

4 Surveyor's obligations

- 4.1 The Surveyor will:
 - 4.1.1 perform the Services using reasonable care and skill;
 - 4.1.2 comply with all applicable laws and regulations; and
 - 4.1.3 observe all rules and regulations notified to the Surveyor and in force at the Site .

5 Client's obligations

- 5.1 The Client will pay the price for the Services in accordance with the Contract.
 - 5.2 The Client will:
 - 5.2.1 afford the Surveyor access to the Site and prepare the site for the supply of the Services;
 - 5.2.2 provide the Surveyor with such facilities, information and assistance (ensuring that information is complete and accurate) and all Site specific safety equipment necessary for the safe completion of the Services;
- in each case as reasonably required to allow the Surveyor to perform the Services.

6 Failure of or delay in performance

- 6.1 If the Surveyor is prevented or delayed in performing the Services by any cause attributable to the Client or if any payment due from the Client has not been paid by the required date, the Surveyor (without prejudice to its other rights):
 - 6.1.1 may suspend performance of the Services until the Client remedies its default or has paid the overdue monies;
 - 6.1.2 will not be liable for any costs or losses sustained by the Client as a result of such suspension; and

6.1.3 may charge the Client (and the Client will pay in accordance with the Contract) costs or losses (including costs or expenses which the Surveyor has committed to in relation to the Order and which cannot be cancelled without cost or penalty to the Surveyor) incurred by the Surveyor arising from the Customer's default, subject to clause 8.

7 Liability

7.1 The Surveyor does not exclude its liability:

- 7.1.1 for death or personal injury caused by its negligence; or
- 7.1.2 for fraud or fraudulent misrepresentation;

7.2 Neither party will be liable for:

- 7.2.1 any form of indirect, consequential or special loss; or
 - 7.2.2 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;
- and, in each case, however arising.

7.3 Other than as set out above and subject to clause 9, the Surveyor limits its liability (however arising) in respect of or in connection with the Services, and otherwise in connection with the Contract, to £2,000,000.

7.4 Unless the Surveyor agrees in writing a longer period of liability, the Surveyor shall not be liable for any fault or defect in its performance of the Contract unless the fault or defect is notified to the Surveyor in writing within 6 years from the date of the Report (or completion of the Services where no Report is required) or such shorter period as is specified by law.

8 USL Service

8.1 The Surveyor will exercise reasonable care and skill in supplying the USL Service.

8.2 Notwithstanding clause 9.1, the Client acknowledges that the USL Service does not produce definitive results and the Client has been put on notice that the USL Service yields results of variable accuracy dependent on Site and ground conditions.

8.3 In recognition of the above, the Client acknowledges that the Surveyor shall not be liable for any financial loss arising from the provision of the USL Service other than where such losses arise from the negligent acts or omissions of the Surveyor, to which clause 8.3 shall nevertheless apply.

9 Intellectual Property Rights

9.1 All intellectual property created or developed by the Client shall, for the avoidance of doubt, remain vested in the Client.

9.2 All intellectual property rights in the Report shall be assigned to the Client upon settlement of all invoices unless otherwise agreed in writing.

9.3 All other intellectual property owned or developed by the Surveyor non-exclusively for the Client and used in the course of supplying the Services shall belong to the Surveyor at all times.

9.4 Each party (the "indemnifier") shall indemnify and keep indemnified the other party (the "recipient") against, and hold it harmless from, all claims, liabilities, costs (including reasonable legal fees and disbursements) expenses, demands or damages brought or made against or incurred by the recipient pursuant to any claim by a third party that any intellectual property, information, material and/or data supplied by or on behalf of the indemnifier and used or processed by the recipient or any of its sub-contractors in connection with the Contract infringes the intellectual property of any third party.

10 Force Majeure

10.1 A party will not be liable if delayed in or prevented from performing its obligations due to circumstances beyond its reasonable control (Force Majeure), provided that it:

- 10.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 10.1.2 uses reasonable endeavours to minimise the effects of that event.

11 Termination

11.1 The Contract may be terminated forthwith at any time;

- 11.1.1 by either party on written notice to the other if the other commits a material breach, or series of breaches resulting in a material breach, of the agreement and such breach is not remediable or is not remedied within 30 days of written notice to do so; or

11.2 by the supplier if it believes on reasonable grounds that the Client is unable to pay its debts within the meaning of s. 123 of the Insolvency Act 1986 (or if an individual, s. 268 of the Insolvency Act 1986).

12 General

12.1 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

12.2 Severability

If any part of these Terms is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Terms and the remaining provisions of the Terms will otherwise remain in full force.

12.3 Notices

Notices under this agreement will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

- 12.3.1 by first-class post: two business days after posting;
- 12.3.2 by airmail: seven business days after posting;
- 12.3.3 by hand: on delivery;
- 12.3.4 by facsimile: on receipt of a successful transmission report from the correct number, and
- 12.3.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

12.4 Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

12.5 Rights of Third Parties

This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

12.6 Entire agreement

The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

12.7 Succession

This Contract will bind and benefit each party's successors and personal representatives.

12.8 Governing Law & Jurisdiction

- 12.8.1 This Contract will be governed by the law of England and Wales.
- 12.8.2 Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.