

GEO LABORATORY TESTING SERVICES LIMITED. STANDARD CONDITIONS OF CONTRACT

1 GENERAL

- 1.1 This estimate is an offer made under these terms and conditions and unless otherwise agreed by us in writing prior to commencement of work on the site, no other terms or conditions shall be applied. No modification or variation of this quotation or these conditions shall be deemed to have been accepted by us or to form part of any contract between us and the client/main contractor unless we have specifically and expressly accepted them in writing.
- 1.2 Unless otherwise expressly stipulated, the enclosed quotation is valid for a period of 90 days from the date of these conditions unless withdrawn by us during that period, and is exclusive of VAT which will be chargeable, if applicable, at the appropriate rate.
- 1.3 Any clerical mistake or error arising from any accidental slip or omission will be subject to correction and these conditions shall be read as if the correction had formed part of the initial agreement.
- 1.4 We will exercise reasonable skill, care and attention in carrying out our obligations under this agreement and no other standard of skill and care shall be applicable to this agreement or be imposed by law or otherwise. Insofar as we have any responsibility for design in the performance of our obligations, our obligations in respect of such design shall be to use reasonable skill and care, and no higher duty shall be applicable.

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METHOD OF WORK

- 2.1 Due to the nature of this type of work, our estimate is necessarily in the form of a Schedule of Rates. Any estimated total cost given is provided for guidance only, is based upon assumed provisional quantities and cannot be assumed to be an accurate estimate. All quantities are remeasurable on completion and payment will be made on the basis of the actual quantities measured.
- 2.2 This estimate is prepared on the assumption that our work will be carried out as one continuous operation with a single visit to site. Should more than one visit be required an additional payment will be required for remobilisation of plant and personnel in the sum set out against "mobilisation costs" under clause 11.2.
- 2.3 This estimate is based upon the assumption that the work can be completed without interruption. If work is interrupted due to instructions given on the part of the client and/or the main contractor and or their servants or agents or for any reason outside the control of ourselves then any time incurred will be charged at the standing time rate quoted in our Schedule of Rates.
- 2.4 We do not accept any liability for claims of whatever nature from owners or tenants or occupiers of land or property resulting from the carrying out of our work as specified save to the extent that such claim arises as a result of negligence on our part. In the event that we are held to be liable for any claim of whatever nature from owners or tenants or occupiers of any land or property resulting from the carrying out of our work then our liability is limited hereunder to a maximum sum of £250,000 per claim or series of claims and in the event that such claim or claims exceeds that amount then the client/main contractor indemnifies us hereunder in respect of all that amount above £250,000 howsoever arising including but not limited to damages costs (including legal costs) and any other losses claims or damage that may have arisen or have been suffered by the said owners tenants or occupiers.
- 2.5 All samples from a contract including BH and Trial Pit Samples will be disposed of within one calendar month of submission of the Laboratory or written Engineers report to which they relate unless otherwise specifically instructed in writing. If such specific written instructions are given and we are required to retain any samples for any period longer than the period mentioned in this clause a charge will be made to the client/main contractor to cover the cost of storage.
- 2.6 The client/main contractor specifically undertakes that it will keep confidential and will not publish or otherwise use any information that may be acquired relating to our activities, whether by itself, its servants agents or otherwise. We retain the right to use in any other work, any new experimental technique, apparatus, knowledge and/or experience developed and/or gained in the course of work done for the client/main contractor or describe the same in published papers, provided that data and specific results obtained for the client/main contractor and its identity are not quoted without its permission.
- 2.7 Title to all goods and reports purchased and/or supplied shall not pass to the client/main contractor until we have been paid in full for all work undertaken for the client/ main contractor whether under this or any other agreement. Furthermore, if the client/main contractor shall incorporate the goods into any other goods or into the fabric of any project, or building, then the title in such other goods shall also belong to us until payment in full of all outstanding sums whether under this agreement or otherwise. The client/main contractor shall be at liberty to sell or charge the goods but the proceeds of such sale or charge shall belong to us and the client shall account to us on demand in respect thereof.

3.0 PAYMENT

- 3.1 Payment is due in full within 28 days of the valuation/invoice date without any deduction for retention discount, contra charge or any other reason whatsoever unless previously agreed by GEO Laboratory Testing Services Limited. in writing.
- 3.2 **If we have not worked for the client previously we will ask for payment in full prior to the issue of any Laboratory Report.** Should no report be required then all monies shall be paid in full, subject to remeasure, prior to commencement of work on site or lodged in some manner mutually agreeable between the parties prior to commencement of our works on site.

4.0 TITLE

Title to all goods, results and/or reports supplied by us or on our behalf shall not pass to the client/main contractor until we have been paid in full (whether under this or any other contract). Further if the client/main contractor shall incorporate the goods, results and/or reports into any other goods then the title in those other goods shall also belong to us until we have been paid in full all outstanding sums. The client/main contractor may, however, sell the goods, results and/or reports but the proceeds of sale thereof shall belong to us and the client/main contractor shall account to us on demand.

5 PROGRAMME

An estimated time for completion of work may be indicated but due to the unforeseeable nature of testing and Work Load, this period cannot be guaranteed and no claims nor liability can be accepted for any delay or costs should the estimated period be exceeded.

6 TERMINATION

We shall be at liberty to terminate this agreement forthwith (without prejudice to any other rights we may have) for any of the following reasons:-

- a. Non-payment by the client/main contractor of any invoice or invoices submitted by us within the period set out in clause 6 hereof.
- b. Suspension of this agreement by the client/main contractor for any period exceeding one calendar month.
- c. Any other substantial breach of the client's express or implied obligations hereunder.
- d. Where the conditions in which we are required to carry out any part of our contract works are hazardous or otherwise unsafe or are not in accordance with the health and safety plan under the Construction (Design and Management) Regulations 1996.
- e. Upon the appointment of a Receiver, the commencement of winding up proceedings (including any meeting of creditors) or the presentation of a bankruptcy petition of the client/main contractor.
- f. Where we are prevented from carrying out our work or from performing our obligations hereunder for any reason or cause which is beyond our reasonable control, including but not limited to strikes, lockouts, pickets, shortages of suitably skilled labour, transport, acts of any governments or official agency, civil or otherwise or military, unlawful acts of third parties, war whether civil or otherwise and whether declared or not.

Immediately upon termination, we shall be entitled to immediate payment for all work carried out either in connection with the project, or the supply of goods and services together with any and all incidental costs relating thereto and any reasonable and proper charges which may be or have been incurred by us in respect of the determination or the event giving rise to the determination.

7 LIABILITY

Our total liability arising in connection with the performance of our obligations under or in connection with this contract in tort or otherwise shall be limited as follows:

- a. Where goods, reports or results are supplied by us we shall at our option replace or repair free of charge or refund the price of the goods, reports or results which are proved to our reasonable satisfaction to be defective solely through faulty materials or workmanship, provided that the client/main contractor shall have given us a minimum of seven clear day's written notice of the defects becoming apparent and provided further that our liability hereunder shall cease upon the expiry of six months from the date of completion of the work and further, all claims for loss (including loss of profit) or damage (whether consequential, indirect or otherwise) are excluded and the client/main contractor indemnifies us accordingly.
- b. Where we have failed to provide the standard of skill and care specified in condition 1.4 hereof in connection with the performance of our obligations under or in connection with this contract then our liability shall be limited at our option, to the performance of our obligation or obligations at our own cost or reimbursement of the client/main contractor's direct losses up to but not exceeding the values of our fees or charges. Provided that we shall have no liability for any indirect or consequential losses (including but without limitation loss of revenue, profit or goodwill) howsoever arising. Further our liability howsoever arising shall cease a maximum of 6 years from the date of completion of our obligations

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under this contract.

8 ADJUDICATION

- a. Any dispute or difference arising under or in connection with this contract shall be referred to the decision of an adjudicator to be appointed by agreement between the parties at any time, or by application of either party to the President for the time being of the Institution of Civil Engineers or his authorised delegate with the object of securing the appointment of the adjudicator and referral of the dispute to him within seven days of the date of such notice.
- b. The adjudicator shall reach his decision within 28 days of the referral to him, or within such longer period as may be agreed by the parties after referral of the dispute.
- c. The adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
- d. The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.
- e. The decision of the adjudicator is binding until the dispute is finally determined by legal proceedings by arbitration or by agreement. The adjudicator and any employee or agent of the adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith.
- f. Payment of any monies resulting from the decision of the adjudicator shall be made within 14 days of the date of such decision.

9 ARBITRATION

In the event that a dispute or difference arises between the parties hereto arising under or in connection with or out of this contract with a monetary value estimated to be £50,000 or greater and which has either been determined by adjudication in accordance with clause 11 hereof or alternatively has, by agreement of the parties, been referred direct to arbitration without an adjudication, such dispute or difference shall be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the Arbitration Act 1996 ("the Act"). The seat of such arbitration being hereby designated as Cardiff, Wales. In the event of a failure of the parties to make the appointment pursuant to Section 16(3) of the Act, the appointment shall be made by the President for the time being of the Institution of Civil Engineers or his authorised delegate. The arbitration will be regarded as commenced for the purposes set out in Section 14(1) of the Act when one party sends to the other a notice pursuant to this clause indicating that that party does not accept the decision of the adjudicator and requires the dispute to be referred to arbitration or, alternatively upon the date when the agreement to refer the dispute to arbitration without the need for an adjudication is concluded between the parties. The arbitrator shall decide the dispute in accordance with the substantive law of England and Wales and the arbitrator shall not have the power conferred upon him by Section 65 of the Act, unless specifically agreed between the parties in writing after the commencement of the arbitration. This clause shall not apply to disputes with an estimated monetary value lower than £50,000.

10 LAW AND JURISDICTION

Every contract and/or agreement to which these conditions apply shall be governed by and be subject to English law and jurisdiction.

11 DAYWORK RATES

Any labour or plant not listed below will be charged at the rates and prices under the conditions contained in the "schedules of Rates carried out incidental to contract works" issued by the Federation of Civil Engineering Contractors current at the date of execution of the dayworks in question.

11.1 Labour:

11.2 Mobilisation Costs