

Hutton + Rostron

Terms and Conditions of Business

1 Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

- 1.1.1 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.2 **Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 5.
- 1.1.3 **Client:** the person or firm who purchases Services from H+R.
- 1.1.4 **Client Default:** has the meaning set out in clause 4.2.
- 1.1.5 **Commencement Date:** has the meaning given in clause 2.2.
- 1.1.6 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5.
- 1.1.7 **Contract:** the contract between H+R and the Client for the supply of Services in accordance with these Conditions.
- 1.1.8 **H+R:** Hutton + Rostron Environmental Investigations Limited (Company Number 02319817) whose registered office is at Netley House, Gomshall, Guildford, Surrey, GU5 9QA.
- 1.1.9 **H+R Equipment:** has the meaning set out in clause 4.1.10.
- 1.1.10 **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.1.11 **Order:** the order form setting out the Client's order for the Services to which these Conditions are attached or referred to.
- 1.1.12 **Property:** the property or site stated in the Order to which the Services relate.

1.1.13 **Reports:** the reports (including supporting documentation), photographs, plans or drawings produced by H+R for the Client.

1.1.14 **Services:** the services, including the Reports, supplied by H+R to the Client as set out in the Services Description contained in the Order.

1.1.15 **Services Description:** the description or specification of the Services set out in the Order.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

2 **Basis of contract**

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when H+R issues written acceptance of the Order or starts performance at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by H+R, and any descriptions or illustrations contained in H+R'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.

2.4 These Conditions apply to the Contract 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.

2.5 Any quotation given by H+R shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3 **Supply of Services**

3.1 H+R shall supply the Services to the Client in accordance with the Service Description in all material respects.

3.2 H+R shall use all reasonable endeavours to meet any performance dates specified in the Order or which are otherwise agreed, but any such dates shall

be estimates only and time shall not be of the essence for performance of the Services.

- 3.3 H+R reserves the right to amend the specification of the Services in the Services Description if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and H+R shall notify the Client in any such event.
- 3.4 H+R warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.5 The Services do not include design consultancy, accordingly H+R recommends that the Client obtains advice from an architect or other appropriately qualified professional in respect of any proposed designs.
- 3.6 H+R shall not be obliged to undertake any action which damages or risks damage to the Property or injury to any person (including any person carrying out the Services on behalf of H+R).
- 3.7 In carrying out any survey of the Property, the inspection will not include areas which are covered or not reasonably accessible. H+R is not obliged to remove anything which may be obstructing an inspection, for example, floor or wall coverings, furniture or vegetation.
- 3.8 If in carrying out the Services the Client requests or consents to H+R moving any item, removing any covering, making any aperture, cutting into any items or taking any samples, the Client:
 - 3.8.1 warrants that it has the consent of the owner and any person having an interest in the Property and applicable items;
 - 3.8.2 shall be responsible for making good any damage or re-instating any item; and
 - 3.8.3 shall indemnify H+R against all claims, liabilities, losses and expenses arising from such actions.
- 3.9 H+R may destroy any papers, documents or recordings relating to the Services six years after the date of the invoice in respect of the Services to which they relate.

4 Client's obligations

- 4.1 The Client shall:
 - 4.1.1 ensure that the terms of the Order and any information it provides to H+R are complete and accurate;
 - 4.1.2 co-operate with H+R in all matters relating to the Services;

- 4.1.3 provide H+R with such information as H+R may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.4 provide H+R, its employees, agents, consultants and subcontractors, with access to the Property as reasonably required by H+R to allow the Services to be carried out;
 - 4.1.5 prepare the Property to allow H+R to carry out the Services (including, as appropriate, removal of furniture, floor and wall coverings and lifting floor boards);
 - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required to allow H+R to access the Property and carry out the Services, in each case before the date on which the Services are to start at the Property;
 - 4.1.7 comply with all applicable laws, including health and safety laws;
 - 4.1.8 notify H+R in writing prior to the commencement of the Services of any materials hazardous to human health at the Property (including asbestos) and any other dangers in respect of the property that are not immediately apparent;
 - 4.1.9 prior to the commencement of the Services, provide to H+R any health and safety risk assessments which exist in respect of the Property or any parts of it and any asbestos risk register in respect of the Property;
 - 4.1.10 keep all materials, equipment, documents and other property of H+R (**H+R Equipment**) at the Client's premises in safe custody at its own risk, not do anything which is detrimental to the condition of H+R Equipment, and not dispose of or use the H+R Equipment other than in accordance with H+R's written instructions or authorisation;
 - 4.1.11 obtain all necessary consents for the use of a drone in the location of the Property, where in the reasonable opinion of H+R a drone is required in connection with the Services;
 - 4.1.12 provide (at its own cost) any scaffolding or cherry picker, where in the reasonable opinion of H+R such equipment is required in connection with the Services; and
 - 4.1.13 comply with any additional obligations as set out in the Order.
- 4.2 If H+R's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, H+R shall have the right to suspend performance of the Services 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 in each case

to the extent the Client Default prevents or delays H+R's performance of any of its obligations;

- 4.2.2 H+R shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from H+R's failure or delay to perform any of its obligations in the circumstances referred to in this clause 4.2; and
- 4.2.3 the Client shall reimburse H+R on written demand for any costs or losses sustained or incurred by H+R arising directly or indirectly from the Client Default.

5 Charges and payment

- 5.1 The Charges for the Services shall be as stated in the Order, provided that if no charges are stated, or the charges are referred to as being calculated on a time basis:
 - 5.1.1 the Charges shall be calculated in accordance with H+R's daily fee rates, as set out in the Order or failing which its current price list at the date of the Contract displayed on its website;
 - 5.1.2 H+R's daily fee rates for each individual are calculated on the basis of a seven and a half hour day from 9.00 am to 5.30 pm worked on Business Days;
 - 5.1.3 attendance at the Property by individuals whom H+R engages on the Services outside the hours referred to in clause 5.1.2 will result in an increased fee rate as stated in the Order or (if not stated in the Order) as notified to the Client prior to such attendance; and
 - 5.1.4 H+R shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom H+R engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by H+R for the performance of the Services, and for the cost of any materials.
- 5.2 Where the Services are to continue (or do continue) beyond six months following the Commencement Date, H+R reserves the right to increase the Charges at any time after the first six months following the Commencement Date by giving at least 20 Business Days advance notice to the Client, following which the Client shall have the right to terminate the Contract by giving at least 5 Business Days notice to H+R before the date on which the increase is due to take effect.
- 5.3 H+R may invoice the Client monthly in arrears for Services carried out and/or on completion of the Services
- 5.4 The Client shall pay each invoice submitted by H+R:
 - 5.4.1 within 30 days of the date of the invoice; and

5.4.2 in full and in cleared funds to a bank account nominated in writing by H+R, and

time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by H+R to the Client, the Client shall, on receipt of a valid VAT invoice from H+R, pay to H+R such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Client fails to make a payment due to H+R under the Contract by the due date, then, without limiting H+R's remedies under clause 9, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8 Ownership of any paper, CD or other tangible medium on which any Report is written or contained (**Tangible Items**), shall not pass to the Client until the Charges for the Services to which the Report forms part are paid in full and until payment is made in full the Client shall not pass any Tangible Item to any third party. If such Charges are not paid when due and remain outstanding the Client shall immediately on demand by H+R return to H+R all Tangible Items in respect of which ownership has not passed to the Client and destroy any copies of the Tangible Items or their contents which the Client has made. Notwithstanding this clause 5.8, all Charges for the Services to which the Report forms part shall nevertheless remain due and owing and once paid H+R shall send back to the Client any Tangible Item that has been returned.

6 **Intellectual property rights**

- 6.1 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 Client) shall be owned by H+R.
- 6.2 Subject to clause 6.4, H+R grants to the Client, or shall procure the direct grant to the Client of, a non-exclusive, royalty-free perpetual and irrevocable licence to copy the Reports (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Reports (provided that the Reports are not modified). The Client shall not remove any markings identifying H+R as the owner of the copyright in any Reports.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

- 6.4 The licence referred to in clause 6.2 shall terminate if payment for the Services to which the Report forms part is not paid when due.
- 6.5 The Client grants H+R a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to H+R for the term of the Contract for the purpose of providing the Services to the Client.

7 **Data protection**

A copy of H+R's privacy policy is available on H+R's website (*[insert web address]*) which sets out the terms on which H+R collects and deals with personal data.

8 **Limitation of liability**

- 8.1 H+R has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10,000,000 per claim (save for claims concerning asbestos, the upper limit for which is £250,000). The limits and exclusions in this clause reflect the insurance cover H+R has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.3.1 death or personal injury caused by negligence;
 - 8.3.2 fraud or fraudulent misrepresentation; and
 - 8.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.4 Subject to clause 8.3 and 8.5, H+R's total liability to the Client shall not exceed £10,000,000.
- 8.5 Subject to clause 8.3 H+R's total liability to the Client arising from any negligent act, error or omission which directly or indirectly involves asbestos shall not exceed £250,000 (such limit forming part of and not in addition to the limit in clause 8.4).
- 8.6 H+R shall not be liable to the Client for the following types of loss which are wholly excluded:
- 8.6.1.1 loss of profits;
 - 8.6.1.2 loss of sales or business;
 - 8.6.1.3 loss of agreements or contracts;

8.6.1.4 loss of anticipated savings;

8.6.1.5 loss of use or corruption of software, data or information;

8.6.1.6 loss of or damage to goodwill; and

8.6.1.7 indirect or consequential loss.

8.7 H+R has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.8 This clause 8 shall survive termination of the Contract.

9 Termination

9.1 Where the Services are to continue (or due continue) beyond six months following the Commencement Date, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one months' written notice expiring at any time after six months following the Commencement Date.

9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten days of that party being notified in writing to do so;

9.2.2 the other party takes any step or action in connection with its entering administration, provisional 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

9.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

9.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without affecting any other right or remedy available to it, H+R may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

- 9.4 Without affecting any other right or remedy available to it, H+R may suspend the supply of Services under the Contract or any other contract between the Client and H+R if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 9.2.2 to clause 9.2.4, or H+R reasonably believes that the Client is about to become subject to any of them.

10 **Consequences of termination**

10.1 On termination of the Contract:

10.1.1 the Client shall immediately pay to H+R all of H+R's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, H+R shall submit an invoice, which shall be payable by the Client immediately on receipt;

10.1.2 the Client shall return all of the H+R Equipment and any Reports which have not been fully paid for. If the Client fails to return H+R Equipment, then H+R may enter the Property and take possession of it. Until the H+R Equipment and any Reports which have not been paid for have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11 **General**

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

11.2.1 H+R 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.

11.2.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of H+R.

11.3 **Confidentiality.**

11.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.

11.3.2 Each party may disclose the other party's confidential information:

11.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

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

11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 **Entire agreement.**

11.4.1 The Contract 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.

11.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** If any provision or part-provision of the Contract 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 11.7 shall not affect the validity and enforceability of the rest of the Contract.

11.8 **Notices.**

11.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next working day delivery service to the address stated in the Order for notices, provided that if none is stated then at its registered office (if a company) or its principal place of business (in any other case); or sent by fax or sent by email to the address specified in the Order.

11.8.2 Any notice shall be deemed to have been received:

11.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

11.8.2.2 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 at the time recorded by the delivery service; and

11.8.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

11.8.3 This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 **Third party rights.**

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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