

Terms and conditions of business

1. Definitions

- 1.1. "Energytest (Commercial) Ltd" is a private limited company registered in England No. 7013944. Registered office: 32 Granville Road, Tunbridge Wells, Kent, TN1 2NX; Tel 01892 315 466; Email: sales@energy-test.co.uk.
- 1.2. "The Company" shall mean, Energytest (Commercial) Limited and where the context permits, its employees, agents or subcontractors.
- 1.3. "Agreed" shall mean, agreed between The Client and The Company.
- 1.4. "Results" are new and unique intellectual property generated as a consequence of a programme of work.
- 1.5. "Deliverable" shall mean any certificate, report, presentation, software or other Results arising from the operation of a contract to be supplied to The Client.
- 1.6. "Proposal" shall mean the offer for supply of services by The Company together with any agreed variations forming a contract between The Company and The Client.

2. General

- 2.1. These conditions shall apply to all work undertaken by The Company for The Client. No additions or variations to these conditions shall apply unless agreed in writing between The Client and The Company.
- 2.2. The Company will conduct its business in accordance with professional standards and maintain a high standard of independence, objectivity, integrity and confidentiality.
- 2.3. The Company's terms and conditions shall prevail over all other terms and conditions received unless agreed by The Company's representative in writing.
- 2.4. The Company reserves the right to decline to accept an order for work without being required to give a reason.
- 2.5. The Company provides information, advice and services in good faith based upon information available at the time. The Company accepts no liability for the consequences of its information opinions and advice whether direct or indirect.
- 2.6. The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.
- 2.7. Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.
- 2.8. All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed, in default of agreement otherwise, by the person for the time being of the President of the Institute of Arbitrators. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the English legal system.
- 2.9. Where conflict of interest does not exist and unless explicitly agreed within a Proposal for work The Company shall not be bound to decline to quote for or accept any offer for work from any source as a consequence of existing or proposed contracts.

3. Fees

- 3.1. The fees payable by The Client will be in accordance with the schedule shown in the Proposal provided by The Company.
- 3.2. Any variations to the work content will be agreed in writing by The Company and The Client and The Company reserves the right to provide a new schedule of fees against the new work programme.
- 3.3. Quotations shall be open for acceptance within 90 days unless agreed otherwise.

4. Payment Terms

- 4.1. Payment shall be made by The Client within 30 days of an invoice being submitted by The Company.
- 4.2. Where it has been agreed that payment for all or part of a contract is to be made in advance work will not commence until payment is actually received as cleared funds.
- 4.3. The Company shall have the right to suspend all work or withhold Deliverables to The Client should payments not be made on time to the agreed schedule. Any adverse impact that this suspension has upon the completion schedule or the quality of the product for The Client shall be at The Client's sole responsibility. This right applies not just to the contract in arrears but also any other contracts with The Client, whether or not payments against these contracts are in arrears.
- 4.4. All invoices shall be paid without deduction. The Company does not accept retentions or un-negotiated discounting of any description.
- 4.5. In the event of an error or query on the invoice this should be notified to The Company without delay. A credit note will be issued to correct errors or omissions and payment of the net amount is then due.
- 4.6. The Company shall be entitled to charge interest on accounts outstanding for more than 30 days and for any sums unjustifiably withheld under clause 4.4 at 2% above the prevailing minimum lending rate of the Bank of England.

5. Limitation of liability

- 5.1. Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of The Company is limited to the value of the contract with The Client or the value of the loss whichever is the smaller. The Company accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.
- 5.2. The Company shall exercise all reasonable skill, care and diligence in the discharge of the duties performed and in producing any report, certificate, information or advice. However, The Company shall not be liable for any loss or damage, whether direct or indirect, arising from the use of reports, certificates, information or advice issued by it.
- 5.3. Whilst The Company agrees to use its best endeavours to perform the contract for The Client as specified, The Company will not be responsible for any delays or failure to complete the contract which is beyond The Company's control and which could not have been reasonably predicted.

- 5.4. The Company shall not be liable for any damage, loss or expense suffered by The Client by reason of any delay in carrying out any test, investigation or consultancy or in issuing any reports, certificates, information or advice to The Client.
- 5.5. Neither party shall be liable to the other for any indirect, special or consequential damages.
6. Operation of contract
 - 6.1. All commitments with respect to the timing and scope of a project given to The Client by The Company - whether verbal or written are made in good faith. The Company agrees to use its best endeavours to fulfil such commitments to clients on the timing and the scope of consultancy and other projects but it does not guarantee performance in either respect.
 - 6.2. Where The Client does not provide The Company with sufficient information to fulfil its commitments and provide Deliverables, The Company reserves the right to invoice The Client for all unpaid work and expenses incurred or 50% of the value of the project, whichever is greater.
 - 6.3. By arrangement tests may be witnessed by The Client or his representative, but The Company shall be entitled to charge for any additional costs thereby incurred.
 - 6.4. Where tests are to be carried out on site The Client shall be responsible for obtaining any necessary permission or permit for The Company's employees to have access to all relevant parts of the premises. The Client shall ensure that the owners or occupiers of the premises have insurances to cover any liabilities that may arise from injury to The Company's staff while on the premises, accidental damage to Equipment or property of The Company while on the premises, damage or injury to third parties caused by or resulting from the tests, investigations or consultancy of The Company.
7. Termination
 - 7.1. Any contract may be terminated by either party before completion by giving one month's notice in writing. The Client will be responsible for any charges incurred or committed up to the date of termination on the quantum meruit basis.
 - 7.2. Where an event caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the contract. In such circumstances The Client will not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and The Company will be entitled to recover any costs already incurred.
 - 7.3. The Company shall have the right to discontinue immediately all work for The Client should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.
8. Use of deliverables
 - 8.1. Certificates issued by The Company may be published by The Client or his Agent provided this is in full without and without modification.
 - 8.2. No Deliverable shall be used in any legal or arbitration proceedings without notification to The Company, except to the extent that may be required by law.
 - 8.3. The Company reserves the right to make facsimile copies and to publish test certificates for the purpose of verification of authenticity by third parties.
9. Copyright and intellectual property
 - 9.1. The Company shall retain copyright in all reports, certificates, presentations or other material delivered in whatever form unless otherwise agreed in writing.
10. Confidentiality
 - 10.1. The Company agrees to hold all information provided by The Client confidential where The Client so specifies, save where such information is known to The Company already, or exists already in the public domain, until, either the information enters the public domain, or The Company is given the same information by a third party, or is released from its confidentiality requirement by The Client, or The Client is found in breach of contract with The Company by a court of law (including non-payment of account) or three years have elapsed - whichever is the sooner.
 - 10.2. The Client agrees to hold confidential all information contained within and concerning about The Company's Proposal(s), fee structures, fees and personnel.
11. Conflict of interest
 - 11.1. The Company will decline any new contract with a third party that would create a conflict of interest with The Client's previously Agreed instructions.
 - 11.2. In the event that a conflict of interest becomes apparent during the conduct of work The Company will bring this to the attention of The Client, and The Client will then be free to vary the contract with The Company in the light of this revelation to the extent that it is affected by the potential conflict of interest. Such a declaration by The Company will be general in nature, so as not to prejudice the confidentiality with the third party. The Company will have the right to resign its contract in such circumstances if, in its judgement, it is unable to proceed with the contract and maintain its fiduciary duty. The Company shall receive payment in full for work undertaken and expenses incurred to the date of disclosure, including all due contract stage payments but not including any entitlement to pro-rata payment for any amounts payable on completion such as performance fees.
12. Illegal activities
 - 12.1. The Company will not carry out any illegal activities on behalf of The Client nor will it incite employees or subcontractors to act in breach of the law. Any requirement in this respect will nullify a contract and The Company will be entitled to recover in full its fee and expenses.