
HAYES MCKENZIE TERMS AND CONDITIONS

- 1.1. The Client acknowledges that in instructing Hayes McKenzie Partnership Limited to commence the Services, the Client agrees to the application of these Terms and Conditions to the exclusion of any other terms or conditions that may have been proposed by the Client.

2. DEFINITIONS AND INTERPRETATION

- 2.1. "Agreement" means the Proposal and these standard Terms and Conditions under which the Consultant has agreed to perform the Services for the Client.
- 2.2. "Client" means the business entity with whom this Agreement is made and indicated by that Party's written acceptance or Purchase Order in respect of the Proposal.
- 2.3. "Consultant" means Hayes McKenzie Partnership Ltd, with a registered office at Unit 3, Oakridge Office Park, Whaddon, Salisbury SP5 3HT (company number 05211418).
- 2.4. "Force Majeure" means war, acts of foreign enemies, embargo, kidnapping, terrorism, sabotage, revolution, riot, civil commotion and any resulting measures taken by any competent authority or court, epidemic, fire, flood, storm or other unusually severe natural weather conditions, Acts of God, radioactive contamination, energy shortage, strike, lock-out, any changes in applicable law or regulations of any government authority or any other circumstance whatsoever beyond the reasonable control of either Party except that inability to make payment is not Force Majeure.
- 2.5. "Parties" means the Consultant and the Client and "Party" shall mean either the Client or the Consultant.
- 2.6. "Price" means the set of rates and associated budget estimate or lump sum price detailed in the Proposal together with any further sum becoming due pursuant to this Agreement including, but not limited to clauses 3.2 and 11.
- 2.7. "Proposal" means the proposal(s) submitted by the Consultant detailing the Services that the Consultant intends to provide for the Client.
- 2.8. "Report" means the report(s) or other document(s) created by the Consultant describing the result of the Services and related matters.
- 2.9. "Service Product" means the Proposal, Report and all charts, tables, drawings, graphs, opinions, advice and recommendations, written or oral, made by the Consultant pursuant to the Services.

- 2.10. "Services" means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement.
- 2.11. "Site" means the area(s) to which the Services or any part of the Services are to be provided by the Consultant pertain, except any offices of the Consultant or the Client.

3. CONSULTANT'S DUTIES

- 3.1. Subject to the terms of this Agreement, the Consultant shall carry out the Services with the reasonable skill and care ordinarily exercised by a competent acoustics consultant carrying out work of a similar scope and complexity to the Services under similar circumstances including locality and in accordance with standards current at the time when the Services are performed. No other warranty or representation, expressed or implied, is included or intended in this Agreement or elsewhere.
- 3.2. The Consultant will perform the Services generally in accordance with the Proposal, but reserves the right to vary the Services if it appears to the Consultant reasonably necessary to do so either as a result of site conditions discovered, or as a result of environmental, safety or security factors, or the discovery of any other information, which has a material effect on the Services. In the event of a variation in the Services due to the reasons described above or in the event that the Client requests a variation to the Services, including extra drafting, report formatting, responses to comments or queries, telephone/conference calls and other communications, the Consultant shall notify the Client promptly of the additional time for and the costs of such variations and the Client shall allow for the additional time and pay any additional costs incurred at the rates set out in the Price or at such rates as otherwise agreed between the Parties in writing.
- 3.3. To the fullest extent permitted by law, the Consultant's sole liability to the Client for any defective or non-conforming Services shall be to re-perform the defective or non-conforming Services at no additional costs, subject always to clause 9 in its entirety. The Consultant may, at its sole discretion, determine how to re-perform any defective or non-conforming Services. The Consultant's re-performance shall constitute complete fulfilment of and the Client's exclusive remedy for the Consultant's liability for defective or non-conforming Services.
- 3.4. If work has to be repeated or extended for reasons outside of the Consultant's reasonable control, such as inappropriate weather conditions, inappropriate security or safety considerations, theft or damage to equipment or refusal of access to an agreed measurement location then such additional works as become necessary shall be chargeable to the Client at the rates set out in the proposal. It should be noted that refusal of access includes the placing of restrictive terms on access including requests for payment which have not been agreed in advance.

- 3.5. The Consultant will use appropriate members of staff to carry out the services and will ensure that such staff members are appropriately skilled and experienced in relation to the work, which they are instructed to carry out.
- 3.6. The Client acknowledges that the Services and the Service Products may not reveal all adverse or other material conditions at the Site that could be identified either through a different formulation of the Services or through more detailed work being carried out by the Consultant.

4. CLIENT'S OBLIGATIONS

- 4.1. The Client acknowledges that in agreeing to provide the Services, the Consultant has relied on the Client, its servants or agents to make full disclosure of all relevant information. The Client further acknowledges that unless otherwise agreed in writing the Consultant may rely upon and use in the performance of Services any information supplied to it by the Client without independent verification and the Consultant shall not be responsible for defects in or non-conformity of its Services attributable to its reliance upon or use of such information.
- 4.2. The Client, its servants or agents shall, at their own expense, promptly provide free access to the Consultant to any relevant information and authorises the Consultant to take photographs, copies and samples of any relevant information for the purpose of providing the Services unless otherwise requested. The Client, its servants or agents shall, at their own expense, promptly transmit to the Consultant any new relevant information which becomes available.
- 4.3. The Client shall, at its own expense, provide access to any property at which the Services or any part thereof it is to be carried out and provide any instructions, decisions, consents, approvals, permits or other clearances reasonably required by the Consultant to carry out the Services.
- 4.4. If the Client suspects at any time that any part of the Services is not being performed in accordance with the terms of this Agreement, the Client shall immediately notify the Consultant and allow the Consultant reasonable time to take appropriate corrective action.
- 4.5. The Client shall promptly inform the Consultant about any issues arising that may affect the performance of the Services, including their schedules and deadlines. The Consultant reserves the right to charge 50% of agreed equipment charges where work has to be postponed due to factors beyond the Consultant's reasonable control.
- 4.6. The Consultant may, at its sole discretion and upon prior written notice, suspend performance of the Services for as long as the Client does not fulfil its obligations under this Agreement. All deadlines for the performance of the Services as set out in the Agreement shall be extended accordingly. The Consultant shall not be liable for the consequences of any delays to the Services

arising from any failure by the Client to comply with its obligations.

5. USE OF RELEVANT INFORMATION

- 5.1. All information made available by the Client to the Consultant under clause 4 is and shall remain the property of the Client and shall not be supplied to any other party without the prior consent of the Client.
- 5.2. All data acquired by the Consultant as part of the provision of the Services shall be retained by the Consultant and provided to the Client on request. It will not be provided by the Consultant to any other party or used for any purpose except for the completion of the Services.

6. COPYRIGHT

- 6.1. All documents and other information (Service Products) supplied by the Consultant is for the sole use of the Client and may not be supplied to or used by any other Party without the prior consent of the Consultant. The Report or other Service Products shall only be used for their originally intended purpose as stated by the Consultant in the Proposal and/or Report and the Consultant shall not be liable for any consequence of their use for any other purpose.
- 6.2. All Service Products will be deemed to be addressed and delivered to the Client only.
- 6.3. The Client agrees not to use the Consultants name or logo in any marketing materials or any public documents whatsoever without the prior written and express consent of the Consultant.

7. CONFIDENTIALITY

- 7.1. The Parties will treat the details of this Agreement and any written or oral information about the Services, including the Service Products, as private and confidential and neither of them shall publish or disclose any detail thereof to any third party unless prior written consent has been given by the other Party. This duty of confidentiality shall not apply to information which a Party can show by reasonable documentary proof:
 - to be or have been in the public domain; or
 - to have become known to the public through no fault of such Party after receipt thereof; or
 - to have been lawfully known by such Party prior to its receipt; or
 - to have been disclosed to such Party without restriction by a third party; or

- is required to be disclosed pursuant to applicable laws or a legally binding order of any competent judicial, governmental or regulatory body.

7.2. Notwithstanding clause 7.1, the Consultant shall be permitted (subject to making them aware of the said confidentiality obligations) to disclose this Agreement and written or oral information about the Services to its employees, insurers and professional advisors or as required by any judge or as necessary in order to pursue any claim in relation to any dispute under the Agreement.

8. PAYMENT

8.1. The Consultant shall submit invoices either monthly, at agreed stages in the work or on termination or completion of the Services.

8.2. The Client shall pay invoices no later than thirty (30) days after the invoice date. Payment is deemed to have been made following receipt in full of the Price (or any invoiced element of the Price) in cleared funds by the Consultant. If an invoice is disputed in any way, the Client will pay the undisputed portion of the invoice without delay. The Parties shall then seek to resolve the disputed portion of the invoice in good faith, without prejudice to the Consultant's rights and remedies set out in clause 8.3.

8.3. In the event of late payment, without prejudice to any other rights and remedies available to the Consultant, the Consultant may:

- charge the Client default interest at four (4) percent above the relevant NatWest Bank base rate of or applicable rate of interest, under the Late Payment of Commercial Debts (Interest) Act 1998, whichever is the greater from thirty-one (31) days from the invoice date until payment is received by the Consultant in cleared funds together with all reasonable expenses thereby incurred by the Consultant;
- suspend or cancel the provision of any Services contemplated under this Agreement; and
- terminate this Agreement in accordance with clause 12.1.

8.4. The Client is not entitled to make any deduction or withhold any amount from any portion of the Price invoiced by the Consultant by way of set off.

8.5. All sums due under this Agreement are exclusive of value added tax the amount of which shall be paid by the Client to the Consultant at the rate and in the manner prescribed by law.

9. LIABILITY OF THE CONSULTANT

- 9.1. To the fullest extent permitted by law, relations between the Parties shall be governed by this Agreement to the exclusion of any other liability whatsoever or howsoever arising under the law of tort or its equivalent in any other country. Under no circumstance will any of the Consultant's Affiliates be liable to the Client or its Affiliates for the Services performed under this Agreement.
- 9.2. If the Client becomes aware of circumstances which might give rise to a claim against the Consultant, it is a condition precedent to the liability of the Consultant that the Client shall give notice of such circumstances to the Consultant within sixty (60) days of the Client becoming aware of them. In no circumstances whatsoever shall the Client be entitled to make any claim against the Consultant arising out of this Agreement unless the Client has, within two (2) years from the date when the Services were completed, given to the Consultant written notice of the substance of the claim.
- 9.3. The Consultant's liability shall be limited to the extent of any loss, damages, injury, expenses, costs (including legal costs) that are directly caused by the negligence of the Consultant, its employees, its subcontractors/sub-consultants, and/or agents hereunder. In no circumstances whatsoever shall the Consultant be liable to the Client for any loss of profit, loss of revenue, business interruption, loss caused by delay, any indirect, financial or consequential loss whether caused by negligence, breach of duty (statutory or otherwise), breach of contract or otherwise and whether or not such losses were foreseeable at the time of entering into this Agreement.
- 9.4. The Limit of Liability of the Consultant arising directly or indirectly from the Services and under this Agreement whether under contract, tort or any other legal basis shall not exceed the Indemnity Limit of £5m specified by the Consultant's current Professional Indemnity Insurance policy. The Client agrees that in no circumstances whatsoever will it enforce any claim, judgment or award against any person (including the Consultant) to the extent that enforcement thereof will, or may result in, the aggregate amount paid by the Consultant exceeding the Limit of Liability.
- 9.5. Nothing herein shall exclude or limit either Party's liability to the other in respect of any fraudulent misrepresentation made by it, or in respect of death or personal injury caused by its negligence.
- 9.6. In the event that the Client notifies the Consultant of its intention to make a claim against the Consultant and subsequently does not proceed with that claim, then the Client shall pay all costs reasonably incurred by the Consultant in responding to the claim, including the costs of preparing a formal legal defence.
- 9.7. The Client acknowledges and agrees that the limits on the Consultant's and its Affiliates' liability in this clause 9 are agreed by reference to the Services, the Price and market conditions

prevailing at the time of performance. The Client further acknowledges and agrees that the provisions of this clause are reasonable under any law applicable to this Agreement and the Client will not claim otherwise in any claims or defence against the Consultant.

10. INSURANCE

- 10.1. The Parties agree to maintain statutory employer's, motor and public liability insurance covering their respective liabilities and each will on request provide evidence thereof to the other.
- 10.2. The Consultant maintains professional indemnity insurance provided such insurance is available in the market at commercially reasonable rates and terms, and shall upon request by the Client provide evidence, in the form of certificates of insurance that such insurance coverage is provided.

11. FORCE MAJEURE

- 11.1. Neither Party shall be liable for any delays or failure to perform any obligations because of Force Majeure. In the event of Force Majeure, both Parties shall use all reasonable endeavours to overcome all difficulties thereby arising and shall resume their respective obligations under this Agreement as soon as is reasonably possible (in which event the Consultant shall receive equitable adjustments increasing the Price and extending the timetable for performance of the Services sufficient to overcome the effects of Force Majeure).
- 11.2. If Force Majeure continues for more than ninety (90) days, either Party may terminate this Agreement by written notice to the other. The Consultant shall be entitled to charge the Client for all Services performed prior to the Force Majeure in accordance with the Price. Services performed and/or expenses incurred or accruing during Force Majeure shall be charged at the Consultant's standard rates, unless agreed otherwise in writing.

12. TERMINATION

- 12.1. Either Party may by written notice terminate this Agreement if the other substantially fails to perform its obligations under this Agreement, provided that the terminating Party has first given the other Party not less than ten (10) days written notice specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.
- 12.2. The Consultant may by written notice terminate this Agreement immediately if the Client has a bankruptcy order made against it or suffers the appointment of a receiver, administrative receiver or administrator over it or any of its property or assets or makes an arrangement or composition with its creditors, is deemed unable to pay its debts within the meaning of s. 123 of the Insolvency

Act 1986 or enters into receivership, administration or liquidation (whether voluntary or compulsory) or if any proceedings are commenced or petition is presented relating to the winding up, insolvency or possible insolvency of the Client.

12.3. In the event of termination by either Party for any cause whatsoever, the Consultant shall be entitled, to be paid for Services performed up to the date of termination. The Consultant shall also be entitled, but not obliged, at the Client's expense to put the Consultant's files into proper order, and to retrieve any equipment from the site where work is ongoing at the time of termination. Such work shall be charged at the Consultant's standard rates.

13. NOTICES; CORRESPONDENCE

13.1. Any notice to be given by one Party to the other shall be served by sending such notice by post, by hand or by email to the addresses specified in the Proposal. Notices shall be deemed to have been received by the recipient Party as follows:

- by post, four (4) days after posting within the United Kingdom or ten (10) days after posting outside the United Kingdom;
- by hand, at the time of delivery;
- by email, at the time of transmission, provided that the correct recipient error has been obtained by the sending Party.

13.2. Other correspondence under this Agreement, including without limitation the Proposal, the Client's acceptance and any amendments according to clause 17.4 may validly be served also by means of email (plain text and/or file attachment). Any emails not sufficiently clear as to their content and/or the sender's authority may be rejected by the recipient Party.

14. SEVERABILITY

14.1. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining parts of this Agreement shall remain in force and shall not in any way be impaired.

15. THIRD PARTY RIGHTS; ASSIGNMENT

15.1. This Agreement shall not confer and shall not purport to confer on any third party any benefit or right to enforce any term of this Agreement for the purpose of the Contracts (Rights of Third Parties) Act 1999 or any right to rely on any Service Products.

15.2. Neither Party may assign this Agreement without the prior written consent of the other.

16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

17. MISCELLANEOUS

17.1. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement.

17.2. To the fullest extent permitted by law, relations between the Parties shall be governed by this Agreement to the exclusion of any other liability whatsoever.

17.3. The Client acknowledges that it has had an opportunity to negotiate changes to these Terms and Conditions prior to the commencement of the Services and has agreed to the Terms and Conditions as contained herein.

17.4. Any amendment to this Agreement must be made in writing.