

Conditions of Supply

STANDARD CONDITIONS OF SUPPLY

Cormac Engineering Limited

1 Definitions and Interpretation

In this document the following words and expressions have the following meanings:-

"Customer"	means the company, firm or person contracting with the Supplier for the supply of Goods and/or Services by the Supplier under a contract (or sub-contract as the case may be)
"Conditions"	means the Conditions of supply set out in this document together with any other conditions agreed in writing between the Customer and the Supplier
"Goods"	means all products supplied to the Customer by the Supplier or any part thereof
"Price"	means the price of the Goods and/or Services excluding VAT
"Quote"	means a quotation describing the Goods and/or Services proposed to be provided by the Supplier together with the proposed Price
"Services"	means all services supplied to the Customer by the Supplier or any part thereof
"Supplier"	means Cormac Engineering Limited (Company Number SC476361).

Headings are inserted for convenience only and shall not affect the interpretation and construction of this Agreement.

2 Basis of Supply

2.1 These Conditions shall apply to all contracts for the supply of Services by the Supplier to the Customer and shall prevail over any Conditions which the Customer purports or seeks to apply under any purchase order, confirmation or other documents. No conduct other than express written acceptance by the Supplier shall be deemed to constitute acceptance of any terms put forward by the Customer.

2.2 Catalogues, brochures, literature, or oral or written representations made by the Supplier's employees during negotiations are not intended to form part of these Conditions.

2.3 No additions or variations to these Conditions including any special Conditions, shall be binding on the Supplier unless agreed to in writing by the Supplier.

2.5 Insofar as not otherwise previously accepted by the Customer in accordance with these Conditions the Customer's acceptance of supply of the Goods and/or Services shall constitute acceptance of these Conditions.

2.6 Any plant equipment hired by the Supplier in the course of providing the Goods and/or Services is hired in accordance with the Construction Plant-hire Association model conditions for the time being in force. A copy of said model conditions shall be supplied to the Customer on request. Insofar as not otherwise previously accepted by the Customer, the Customer's acceptance of hired plant equipment on site shall constitute acceptance of said model conditions.

3 Quotes

3.1 Any Quote submitted to the Customer by the Supplier shall be issued based on the following provisos:

3.1.1 No Quote shall constitute an offer and any Quote may be withdrawn or revised at any time prior to commencement of supply of the Goods and/or Services.

3.1.2 Quotes shall be based on the scope and quantities of works as described in the appendices attached to each Quote and the Supplier expressly reserves the right to review the Price in the event that any additional works are required.

3.1.3 Quotes shall also provide for alteration, repair and maintenance to any temporary works unless the Customer has expressly requested otherwise;

3.1.3 Quotes shall specifically exclude supply of the following Goods and/or Services unless the Customer has expressly requested otherwise:

3.1.3.1 Weatherproof enclosures;

3.1.3.2 All building work;

3.1.3.3 All scaffolding and access equipment including but not restricted to supply, erection, movement and dismantling of the same;

3.1.3.5 All road crossings, ductings and protection of the Supplier's works;

3.1.3.5 Any decontamination required in the event that the Supplier's Goods or equipment becomes exposed to or contaminated with hazardous substances.

3.1.3 Quotes shall also be based on the presumption that the Supplier shall be afforded the opportunity to work continuously and uninterrupted when supplying Services.

3.1.5 No Quote shall include the cost of any parent company guarantees, collateral warranties or performance bonds unless the Customer has expressly requested that such costs be included;

3.1.6 Quotes [for sub-contract works] are submitted on the basis that no retention or defect liability period shall apply unless the Customer has expressly requested otherwise.

3.1.7 Quotes are submitted on the basis that, prior to commencement of supply of Goods and/or Services, a detailed programme of works shall be agreed between the Supplier and the Customer and these Conditions shall expressly govern the same.

4 Insurance

4.1 Risk in Goods shall pass on delivery, and the Customer will insure the Goods accordingly.

4.2 For all other purposes, the Supplier shall assume that its standard insurances are adequate for the Customer's purpose unless otherwise advised by the Customer. Copy policies will be issued only on request.

5 Goods, Services, Price and Payment

5.1 The quantity and description of the Goods and/or Services will be as set out in the Supplier's Quote or as otherwise agreed to in writing by the Supplier.

5.2 The Price shall be the Supplier's quoted price or such other price as shall be agreed in writing by the Supplier. Receipts for payment will be issued only on request.

5.3 The Supplier reserves the right to increase the Price of the Goods and/or Services by giving notice to the Customer at any time before supply, to reflect any increase in the costs of the Supplier due to any factor beyond the reasonable control of the Supplier (including, without prejudice to the generality of the foregoing, any significant increase in the costs of labour, materials or other costs of manufacture).

5.5 Unless otherwise expressly agreed to by the Supplier in writing, the Customer will pay the Price in full (plus VAT) within [30] days of the date of issue of the Supplier's invoice. Time of payment is of the essence. If the Customer fails to pay the Price within 30 days then the Supplier, without prejudice to its other rights or remedies, shall be entitled to:-

5.5.1 suspend or cancel deliveries of any Goods and/or Services due to the Customer; and/or

5.5.2 appropriate any payments made by the Customer to such of the Goods and/or Services (or other Goods and/or Services supplied under any other contract with the Customer) as the Supplier may in its sole discretion think fit; and/or

5.5.3 charge interest on all outstanding sums on a day to day basis until the date of payment at the rate of [3]% above the Royal Bank of Scotland base rate from time to time in force until final payment of all sums due.

6 Risk and Passing of Property

6.1 Notwithstanding risk in Goods passing in accordance with Clause 4.1, title in Goods shall not pass to the Customer until whichever shall be the first to occur of the following:

6.1.1 Payment being received by the Supplier for Goods and/or Services and no other amounts then being outstanding from the Customer to the Supplier in respect of any other Goods and/or Services supplied by the Supplier;

6.1.2 The Customer selling the Goods in accordance with the provisions of these Conditions, in which case title to the Goods shall be deemed to have passed to the Customer immediately prior to delivery of the Services to the Customer's customer; and]

6.1.3 The Supplier waiving its rights in writing under this Clause whereupon title to the Services shall forthwith vest in the Customer.

6.2 The Customer is empowered by the Supplier to sell, or agree to sell as principal in relation to any such supply or agreement to sell, the Goods delivered to the Customer subject to the following express conditions:-

6.2.1 That the Customer account for the entire proceeds of any resupply made by it of the Goods or such proportion of any proceeds of supply as reflect the Supplier's rights therein, including any insurance proceeds;

6.2.2 That the Goods shall only be sold for a reasonable price and on commercially reasonable terms;

6.2.3 That the proceeds referred to in Clause 6.2.1 are kept separate from the Customer's other moneys and are not to be paid into any overdrawn bank account and are to be at all times identified as the Supplier's moneys; and

6.2.5 That the Supplier shall at any time be entitled to appropriate any payment made to the Customer in respect of any Services and/or any of the proceeds referred to in Clause 6.2.1 in settlement of such invoices or accounts in respect of such Goods and/or Services as the Supplier may in its absolute discretion think fit, notwithstanding any purported appropriation to the contrary by the Customer.]

6.3 Until title to the Goods passes:-

6.3.1 The Customer will hold the Goods as fiduciary agent and bailee for the Supplier;

6.3.2 The Goods shall, subject to Clause 6.2 be kept separate and distinct from all other property of the Customer and of third parties and in good and substantial repair and condition and be stored and labelled in such a way as to be clearly identifiable as belonging to the Supplier and the Customer will keep the Goods free from, and will indemnify the Supplier against any charge, lien or other encumbrance thereon;

6.3.3 The Supplier may at any time revoke the power of supply and use contained in Clause 6.2 by notice in writing to the Customer if the Customer is in default for longer than 16 days in the payment of any sum whatsoever due to the Supplier or if the Supplier has bona fide doubts as to the solvency of the Customer;

6.3.5 The Customer's power of supply and use contained in Clause 6.2 shall automatically cease if the Customer instigates or is subject to any form whatsoever of Insolvency or Bankruptcy proceedings;

6.3.6 Upon determination of the Customer's power of supply and use the Customer shall place any of the Goods in his possession or under his Control and unsold at the disposal of the Supplier and the Supplier shall be entitled to enter upon any premises of the Customer for the purpose of removing such Goods. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Supplier thereunder or otherwise.

6.5 The Customer shall insure and keep insured the Goods to the full price against "all risks" in the joint names of the Customer and the Supplier to the reasonable satisfaction of the Supplier until the date that property in the Goods passes from the Supplier and shall furthermore whenever requested by the Supplier produce a copy of the policy of insurance.

7 Indemnity

7.1 The Customer agrees to indemnify the Supplier against any damages, losses, costs, claims, expenses incurred by the Supplier in respect of any claim brought against the Supplier by any third party for:-

7.1.1 any loss, injury or damage wholly or partly caused by the Services or the Goods and their use;

7.1.2 any loss, injury or damage in any way connected with the performance of this contract.

7.2 It is understood that only authorised personnel of the Supplier shall be authorised to alter or make additions to any [temporary] electrical installation connected with supply of Goods and/or Services under this contract unless the Supplier agrees otherwise in writing. The Supplier shall accept no liability for any losses, costs, claims or expenses howsoever arising as a result of any such alterations or additions made by unauthorised personnel.

7.4 The Customer agrees to indemnify the Supplier against any costs incurred by the Supplier in repairing or replacing any equipment used during the supply of the Goods and/or Services in the event that any such equipment is lost or damaged. Such costs shall be payable within [30] days of the date of issue of an invoice by the Supplier.

Provided that this Clause will not require the Customer to indemnify the Supplier against liability arising as a result of the Supplier's negligence.

8 Liability and Remedies

8.1 It is expressly understood that neither the Customer nor the Supplier are "consumers" (as defined in the *Unfair Contract Terms Act 1977*) and that all warranties, terms or conditions other than those given under these Conditions are hereby excluded to the full extent permissible by law.

8.2 Time shall not be of the essence in respect of the late delivery of the Goods and/or Services.

8.3 The Supplier shall accept no liability for any loss injury or damage wholly or partly caused by the failure of any other party supplying items of electrical plant or equipment to ensure that said items are fully tested and certified prior to entering from a temporary electrical system supplied and/or installed by the Supplier.

8.5 Except as provided for elsewhere in these Conditions, the liability of the Supplier shall be limited to the Price of the Goods and/or Services.

9 Force Majeure

9.1 If performance of the Supplier's obligations is delayed or hindered by circumstances outside the Supplier's control amounting to a "force majeure" event as defined hereunder, the following provisions shall apply:-

9.1.1 The Supplier will as soon as reasonably practicable, give the Customer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Supplier relying on the remaining provisions of this Clause and the Supplier will incur no liability for failure to give such notice.

9.1.2 The Supplier's duty to perform shall be suspended for as long as the circumstances amounting to 'force majeure' continue and the time for performance of the Supplier's obligations shall be extended by a period equal to the duration of those circumstances.

9.2 If due to circumstances outside the Supplier's control amounting to 'force majeure', there is a shortage of Goods or an inability to reasonably supply Services of a type to be supplied under this contract so that the Supplier has or can obtain or produce insufficient Goods and/or Services to satisfy its contracts with the Customer and the Supplier's other customers, the Supplier may allocate the Goods and/or Services available to it between the customers with whom it has contracts for the supply of such Goods and/or Services and may make that allocation on such basis as it thinks fit. In that case:-

9.2.1 The Customer will accept and pay for such quantity of Goods and/or Services supplied to it;

9.2.2 the price payable for the Goods and/or Services shall be proportionate to the Price in the same ratio as the quantity supplied to the contract quantity; and

9.2.3 the Supplier shall be treated as having discharged its obligations to deliver the Goods and/or Services under this contract and shall not be liable for breach of contract in respect of the failure to deliver the full contract quantity.

9.3 For the purposes of this clause, "force majeure" means any event outside the Supplier's control including, but not limited to, the following: strikes, sit-ins, trade disputes, walkouts or any other actual or threatened industrial action or difficulty in obtaining labour, plant and materials or bought-in components or breakdown of plant machinery (including transport) or interruption of power supplies, fire, flood, legal action, war, civil riot or intervention by governmental authority.

10 Waiver

No failure by the Supplier to enforce the Conditions shall constitute a waiver of its rights hereunder.

11 Amendment

The Conditions may be subject to amendment by the Supplier from time to time by 21 days notice given by the Supplier. In the event that the Customer does not reject the amendment within that 21 day period the Customer will be deemed to have accepted the amendment.

12 Notices

12.1 Any notice required to be given in accordance with these Conditions shall be deemed to be served in the following circumstances:-

12.1.1 if sent by pre-paid first class recorded delivery post to the party to whom it is given and its last known address, in which case it shall be effected on the second day after posting;

12.1.2 if sent electronically or by fax to the recipient's e-mail address or fax number in which case it shall be effective on transmission if evidenced by a "correctly-transmitted" transmission report from the sender's fax machine or e-mail account.

13 Brochures, Drawings, Prints and Specifications

Any brochures, drawings, prints and specifications supplied by the Supplier to the Customer under or in connection with or contemplation of the contract shall remain the property of the Supplier. The Customer shall not copy or reproduce them without the Supplier's prior written consent.

15 Trademarks

The Customer will not alter, tamper with or remove any trademarks, numbers or other means of identification used on or in relation to the Goods and/or Services.

16 Governing Law

The interpretation of these Conditions are subject to the laws of Scotland and both the Customer and the Supplier shall submit to the exclusive jurisdiction of the Scottish Courts, except that the Supplier may be entitled to proceed in any jurisdiction where proceedings may lawfully be brought against the Customer.