

## TERMS & CONDITIONS OF BUSINESS

THESE TERMS have been accepted on \_\_\_\_ day of \_\_\_\_\_ 2019

### WHEREAS:

- A. The Services of the Company are offered to the Client upon condition of their respective acceptance without modification of the following terms of service and conditions of use.
- B. By using the Services, the Client agrees to be bound by these Terms. If the Client is entering into these Terms on behalf of a company or any other legal entity, the Client represents that it has the authority to bind such entity to the Terms.

### THESE TERMS WITNESSETH:

#### 1. DEFINITIONS AND CONSTRUCTION

##### 1.1 Definitions

In these Terms, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

“**Company**” means Murphy Surveys UK Ltd., a limited company incorporated in England and Wales, having registered number 6012484 and its registered office at United House, 39-41 North Road, London, N7 9DP.

“**Client**” means any person or entity which contracts with the Company for the provision of the Services.

“**Clients Invoicing Party**” means a company named by the Client in the Sales Order Form to whom the Company submits invoices for payment.

“**Confidential Information**” shall in respect of the Client mean all information relating to their boundary dispute which has been notified to the Company or such other information as may be agreed between the Company and the Client and shall in respect of the Company mean information relating or connected to the Deliverables and the Services.

“**Contract**” means the contract between the Company and the Client for the Supply of Services which is subject to these Terms;

“**Deliverables**” mean the drawings, digital data, photographs, listings, reports, surveys or any other supporting documentation created by the Company when providing the Services requested by the Client;

“**Fees**” means the fees referred to in Clause 4 of these Terms;

“**Intellectual Property**” means such trademarks, copyrights, technology rights and similar rights arising from, relating to or created pursuant to the Services;

“**Services**” means in respect of any Client the provision of such survey solutions which are specified in the Quotation which may include 3D HD Laser Scanning, Aerial LIDAR Surveys, Aerial Photographic Surveys, Area Measurement Surveys, As Built Surveys, Building Information Modelling, Conservation, Electrical Resistivity Imaging, Electromagnetic Surveys, Elevated Photography, Energy Assessments, Expert Witness, Facades and Elevations, Flood Surveys, Geographic Information Surveys, Geophysics/ Utility Mapping, Ground Penetrating Radar, Hydrographic Surveys, Legal Mapping, Measured Building Surveys, Microgravity Surveys, Monitoring Solutions, Pipeline Surveys, Rectified Photography, Setting Out, Site Control, Topographic Surveys and Verified Views and Rights to Light;

“**Sales Order Form**” means the document the Client returns to the Company confirming their acceptance of the provision of the Services under the terms outlined in the Quotation and these Terms and including details of the party to be invoiced in connection with the Services;

“**Site**” means the place which is the subject of the Services and where the surveying and physical aspects of the Services are to be undertaken by the Company;

“**Terms**” means the terms and conditions set out in this document;

“**Trademarks**” means Murphy Surveys or other similar registered or unregistered trademarks owned by the Company in relation to the Services;

“**Quotation**” means the written statement issued by Murphy Surveys to a Client setting out the Services which will be provided and referencing the price at which such requested Services will be provided to the Client;

“**Working Day**” means every day that is not a Saturday, Sunday or bank holiday or as agreed in writing between the Company and the Client;

“**Working Hours**” means the hours from 8.00am until 5.30pm every Working Day, or as may be agreed from time to time between the Company and the Client.

#### 1.2 Construction

1.2.1 In these Terms words such as “**hereunder**”, “**hereto**”, “**hereof**” and “**herein**” and other words commencing with “**here**” shall, unless the context clearly indicates to the contrary, refer to the whole of these Terms and not to any particular Section or Clause thereof.

1.2.2 Save as otherwise provided herein, any reference to a Section, Clause, paragraph or sub-paragraph shall be a reference to a Section, Clause, paragraph or sub-paragraph (as the case may be) of these Terms and any reference in a Clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the Clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.

1.2.3 Any reference in these Terms to a document includes that document as amended, substituted, restated or novated from time to time.

1.2.4 Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof and shall also include any subordinate legislation made from time to time under such provision. Any reference to any provision of any legislation, unless the context clearly indicates to the contrary, shall be a reference to legislation of England and Wales.

1.2.5 In these Terms, the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa. References to persons shall include natural persons, firms, bodies corporate, unincorporated associations and partnerships, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

1.2.6 Any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

#### 2. APPLICATION OF THESE TERMS

2.1 These Terms shall apply to the use of the Services by the Client. By using the Services the Client agrees that these Terms shall apply and that no other terms, conditions, warranties or representations apply to its relations or commercial arrangements with the Company. These Terms shall be deemed to have been accepted by the Client upon either:-

- (i) the written acceptance of the Client through returning a Sales Order Form; or
- (ii) the commencement of the Services.

2.2 The Company reserves the right to publish additional operating rules or policies applicable to the use of the Services from time to time, which shall be deemed to have been accepted by the Client as applicable, by their continued use of the Services.

2.3 No request for Services by the Client of the Company shall be deemed to be accepted by the Company until either a written acknowledgment of such acceptance is issued by the Company or (if earlier) the Company performs the Services.

2.4 The Client warrants and shall ensure that the terms of its Sales Order Form and any applicable specification are true, complete and accurate and hereby agrees to indemnify the Company for any losses it may suffer as a consequence of any information in the Sales Order Form being learned to be incorrect.

2.5 Any Quotation is valid for a period of 60 days only from its date, but the Company may withdraw it at any time.

#### 3. THE SERVICES

3.1 The Company shall use reasonable skill and care in its performance of the Services which it will use all reasonable endeavours to perform in a timely manner and in accordance with the Contract/Specification.

3.2 Unless otherwise agreed in writing by the Company, the Company shall perform the Services at the Site. The Company shall not be obliged to commence the work until requested in writing to do so by the Client. Once work has commenced the Client shall not cancel the Contract without compensating the Company in full for the work done to notification of cancellation together with payment of 20 per cent of the Contract Price remaining.

3.3 The Company may sub-contract part of the work, whilst accepting the full responsibility for the work as if it had not been sub contracted.

#### 4. FEES

4.1 The Client shall pay fees to the Company at the rates specified on the Quotation in such instalments as may be specified on the Quotation or in the absence of such specification the Company may send the Client an interim invoice on a monthly basis for work completed. Notwithstanding any such agreement the fees shall be paid in full within 15 days of the date of invoice.

4.2 The Company shall be entitled, for certain categories of work, to request payment of fees, and/or disbursements and/or VAT (either in full or in part) in advance of any of the Services being undertaken. Where applicable, this will be explained to the Client in writing.

**4.3** The Company shall be entitled to request payment of fees for any materials provided by them in preparation of the deliverables. Where applicable, details of the materials and their charges will be provided in writing.

**4.4** In the event of a change in the scope of the Service or the Company being required to carry out any additional Services, the Company reserves the right to charge additional fees. Any additional fees will be confirmed in writing.

**4.5** Without prejudice to Clause 4.3 and 6.1.3 areas not accessible for survey and subsequently marked as such in the deliverables will not change the scope of the Service. Any subsequent return visit to site will be charged at an additional fee.

**4.6** The Client shall not be entitled to set off against any of the Company's charges for the Services any money owed by the Company to the Client.

**4.7** Without prejudice to these Terms, if the Client is late in paying any of the Company's fees then the Company shall be entitled to pursue these sums through the Courts and reserves the right to charge such party interest (both before and after any judgement) at a rate equivalent to the rate set out in the relevant legislation pertaining to late payments, calculated on a daily basis from the date such charge accrued until payment. The Company also reserves the right to recover interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

**4.8** Until the Company receives full payment in respect of any overdue charges for the Services from a Client or if the Client fails to meet any of the agreed payment instalments it may cease to provide the Services until all such outstanding sums due are paid. In such circumstances, the Company shall not be liable for any delays, losses or expenses howsoever resulting from such suspension.

**4.9** Without prejudice to any other right or remedy, in the event of non-payment of the Company's invoice in full by the due date, the Client shall not be entitled to rely on, or use, any materials provided to it by the Company under the Contract and the Company shall have exclusive ownership of all deliverables.

**4.10** In such circumstances, if instructed to do so by an authorised representative of the Company, the Client shall return or destroy the materials within seven days of receipt of such instructions, and shall certify to the Company that such instructions have been complied with and that it has not used, or relied on, the materials.

**4.11** The remedies available to the Company under these Terms are additional to its general rights and remedies in statute and law.

**4.12** Where the Company is required to charge VAT, its charges, unless otherwise specified, shall be exclusive of VAT, which shall be charged in addition to the Fees.

**4.13** In the event that the Client fails to provide such matters as agreed in the Contract the Company shall be entitled to an extension of the Contract period for any consequent delay and to pay for any additional costs the Company may reasonably incur.

## **5. COMPANY RESPONSIBILITIES**

The Company hereby covenants that it shall use all reasonable endeavours to:-

**5.1** Complete and execute the work in conformity with the specification and the delivery dates agreed. Effective delivery shall be delivery to the Client or, by instruction, to a Third Party. Where the Company is unable to deliver due to circumstances beyond their control, the company is entitled to treat the Contract as being fulfilled and invoice the client accordingly. Any request by the Company for an extension of time shall be made in writing to the Client within seven days of the Company being aware of such need arising.

**5.2** The Company shall hold or effect policies of insurance to cover Public Liability, Employers Liability and Professional Indemnity up to the amounts then appropriate for the industry. The surveyor shall not be responsible for the insurance of work installed in or on property under the control of the client.

## **6. RESPONSIBILITIES OF CLIENT**

**6.1** The Client hereby covenants that it shall:-

**6.1.1** Complete and submit to the Company the Sales Order Form and provide to the Company all the information required in order that the Company may supply the Services in accordance with Client specifications. The Sales Order Form will need to be completed in full and signed by the Client and sent to the Company together with the signed and approved Quotation.

**6.1.2** Pay the fees as required by these Terms in relation to the use of the Services.

**6.1.3** Be responsible for obtaining any necessary permissions where the Company is required to have access on or to private property. The Client will also furnish the Company with a list of occupiers and any letters of identification that may be needed. The Company will use its reasonable endeavours to assist with liaison with any third party necessary in order to gain access to private property where requested to do so.

**6.1.4** Ensure that access to the Site is available at the pre-arranged appointment time for the site visit.

**6.1.5** Immediately inform the Company as soon as it becomes aware of any errors or omissions in or alterations which should be made to the information provided to the Company.

**6.1.6** Provide all relevant information regarding the nature and scope of the work and any usual conditions which may apply.

## **7. TERMINATION OF THE CONTRACT**

**7.1** The Company may terminate these Terms immediately in respect of a Client if:-

**7.1.1** The Client does not pay any sums due to the Company under these Terms on the due date.

**7.1.2** The Client is unable to pay its debts as they fall due or becomes the subject of any formal insolvency procedure (for example, receivership, liquidation, administration, voluntary arrangements or bankruptcy).

**7.1.3** The Client is in breach of any of its material obligations under these Terms, including, without limitation, any of the covenants set out in Clause 6.

**7.2** Any damages resulting from a breach of these Terms which occurs before the expiry of any contract formed pursuant to these Terms will not be affected by termination of such contract.

## **8. LIMITS ON COMPANY'S LIABILITY**

**8.1** The Company shall not be liable for any inaccuracy in the Deliverables beyond the specified scale or accuracy, or within the specified tolerance being the agreed margin for error or for any matters arising from their use for purposes other than that stated in the Quotation. No liability shall attach to the Company, in any circumstances, in respect of any consequential loss or damages suffered by the Client.

**8.2** Information or data, including all data provided by verbal instruction, issued to the Company by the Client is assumed to have been verified before issue. The Company will not carry out any checks on the data unless specifically required to do so by the Contract. Any delays or rectification caused by the erroneous data will be charged for at appropriate daily rates.

**8.3** The Company shall not be liable for any inaccuracies in third party material utilised by the Company in good faith in the preparation of the Deliverables or the provision of the Services.

**8.4** The Company's liability shall also be strictly limited in respect of all matters to the value of the contract.

**8.5** The Company shall not be liable for any failure to locate any underground material on account of any factor outside of its own control including but not limited to excessive depth of its position, poor ground conditions, immovable objects in the way or the incompatibility of the type of material making up the Services with the equipment used.

**8.6** The Company shall not be liable to clean or remove any non-permanent markings made to public or private property whilst preparing the Services.

## **9. COPYRIGHT**

**9.1** The copyright in the Deliverables and in all preparatory or ancillary design work and material created by the Company in the creation of the Deliverables or the provision of the Services shall remain vested in the Company who will grant a non-exclusive licence for use by the Client for any purpose related to the Contract once payment has been received in full. Such licence may not be transferred by the Client to a Third Party without the prior written agreement of the Company. The Client shall not remove any markings identifying the Company as the owner of the Copyright.

**9.2** All other non-exclusive licence granted by the Company to the Client pursuant to Clause 9.1 may be automatically revoked by the Company by service of written notice on the Client, if the Client is in breach of any of these Terms.

## **10. INTELLECTUAL PROPERTY**

**10.1** For the avoidance of doubt and without prejudice to the provisions of Clause 9 all intellectual property created or developed now or in the past by the Company or any employee, agent or sub-contractor of the Company in the course of supplying the Services shall remain vested in the Company.

**10.2** All other intellectual property owned or developed by the Company non-exclusively for the Client and used in the course of supplying the Services shall belong to the Company at all times and may be used by the Company in the provision of Services to other Clients.

## **11. MAINTENANCE OF DATA**

**11.1** The Company shall maintain all digital data obtained during the course of and for the purpose of carrying out the Contract until such time as the Client has confirmed the deliverables are of an acceptable quality standard and contracted scope and in any case the Client will have been deemed to have accepted the

deliverables as such unless we receive in writing a notification to the contrary with 7 days from the date of delivery of the Services, or the services are no longer required to be delivered due to order cancellation or avoidance for whatsoever reason. For the avoidance of doubt, any raw data collected during site surveying activities from any digital, electronic or manual device or instrument shall not be construed as a Deliverable under the contract.

**11.2** The Company shall maintain an archive of digital copies of deliverables in accordance with its own archiving policy which shall change from time to time, such digital files shall be maintained for a reasonable period for the Company's sole benefit. Clients are required to rely on their own data management and retrieval resources to assure future availability of any digitally supplied deliverables under contract.

## **12. ASSIGNMENT**

The Contract created pursuant to these Terms is personal to the Company and the Client, and the Client may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms without the Company's prior written consent.

## **13. INDEMNITY**

Without prejudice to Term 2.5 the Client agrees to indemnify, defend (at the Company's request), and hold the Company, its parent, subsidiaries, affiliates, officers and employees, harmless from any claim or demand, including reasonable legal expenses, made or brought by any third party due to or arising out of the Client's fraudulent behaviour, wilful misconduct or negligent use of the Services or any part thereof, or the violation of the Terms or any provision therein by the Client, or the infringement or misappropriation by the Client of any Deliverables and/or use of the Services or the violation of any intellectual property rights of any person or entity, or the use or misuse by the Client or third parties of the Company's Services.

## **14. NOTICES**

Any notice or communication under these Terms required to be served on or given to either the Client or the Company should be either delivered by hand, sent by first class post to the other party at its operating address(es) or to another address previously notified to the sending party, or sent by e-mail to such domain or e-mail address as it has previously notified to the sending party and should be deemed to have been given when actually received or, if sent by first class post, two full days after posting or, if sent by e-mail, upon receipt of a reply, acknowledgement or read receipt.

## **15. FORCE MAJEURE**

**15.1** Save for those relating to payment, the obligations of the Company under these Terms shall be suspended during the period and to the extent that the Company is prevented or hindered from complying therewith by a Force Majeure Event. In these Terms "**Force Majeure Event**" shall mean any event beyond its reasonable control which may include but shall not be limited to: (1) acts of terrorism, insurrection, riots, civil unrest and military action; (2) the exercise of emergency powers by any local, regional or national governmental authority; (3) fire, flood, earthquake, storm, volcanic eruption and other natural disasters; (4) industrial action, strikes and lock-outs; (5) blockage or embargo; and (6) the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, internet or other goods and/or services (including any third party materials).

**15.2** In the event of the Company being hindered or prevented from fulfilling its obligations under these Terms due to a Force Majeure Event, the Company shall give notice of suspension as soon as reasonably possible to the Client, stating the date and extent of such suspension and the cause thereof. The Company shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the Client.

## **16. NO PARTNERSHIP OR AGENCY**

Nothing in these Terms are intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **17. ENTIRE AGREEMENT**

These Terms and any document referred to in these Terms constitutes the entire understanding between the parties with respect to the subject matter of these Terms and supersedes all prior agreements, contracts, negotiations and discussions between the parties relating to it.

## **18. WAIVER**

The failure of a party to exercise or enforce any right under these Terms shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

## **19. SEVERANCE**

**19.1** If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

**19.2** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **20. JOINT & SEVERAL OBLIGATIONS**

Each of the Client and Clients Invoicing Party shall be jointly and severally liable for the payment of fees under Clause 6.1.2.

## **21. NON-SOLICITATION OF EMPLOYEES**

The Client agrees that without express written consent, at all times while the Contract is in effect and for twelve (12) months after the contract period terminates, the Client will not, directly or indirectly, whether individually or as an officer, director, employee, consultant, partner, stockholder, individual proprietor, joint venturer, investor, lender, consultant or any other capacity whatsoever: solicit, divert hire, retain (including as a consultant) or encourage to leave the employment or contract period of the Company any employee or contractor.

## **22. VARIATION**

No variation, waiver or agreed termination of this agreement or of any document referred to in it shall be effective unless it is in writing and agreed between the parties in the same manner as these Terms.

## **23. CONFIDENTIALITY**

**23.1** The Client and the Company undertake that they shall not [at any time or at any time during this agreement, and for a period of 3 years after termination of this agreement], copy, use or disclose to any person any Confidential Information, except as permitted by these Terms.

**23.2** The Client and the Company may disclose Confidential Information:-

**23.2.1** To the employees, officers, representatives or advisers of the Company who need to know such information for the purposes of carrying out its obligations under this agreement. The Company and the Client shall ensure that the employees, officers, representatives or advisers of the Company to whom the Confidential Information is disclosed comply with this Clause.

**23.2.2** As may be required by law, court order or any governmental or regulatory authority.

**23.3** No party shall use the Confidential Information for any purpose other than to perform its obligations under this agreement.

## **24. GOVERNING LAW AND JURISDICTION**

**24.1** These Terms are governed by, and shall be construed in accordance with the laws of England and Wales.

**24.2** Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any dispute, which may arise out of or in connection with these Terms and, for such purposes, each party irrevocably submits to the jurisdiction of the Courts of England and Wales.