



The Client acknowledges that, unless otherwise expressly agreed in writing between the Parties these Conditions of contract apply to the exclusion of any other terms and conditions.

Supplemental to this document are the Terms and Conditions relating to training services provided by The Olive Consultancy (see Schedule 1), which are for the purposes of clarifying conditions relating to training contracts.

DEFINITIONS

'Agreement' means these Conditions of Contract for Environmental Consultancy Services together with the Proposal.

'Client' means the individual or organisation with whom this Agreement is made and indicated by that Party's acceptance of the Proposal.

'Consultant' means The Olive Consultancy Limited ('Olive'), with a registered office at Wentworth House, 4400 Parkway, Whiteley, Hampshire, PO15 7FJ and a place of business at 2 Venture Road, University of Southampton Science Park, Chilworth, Southampton, SO16 7NP.

'Force Majeure' means war, acts of foreign enemies, terrorism, revolution, riot, civil commotion, fire, flood or other natural disaster, radioactive contamination or any other circumstance whatsoever beyond the reasonable control of either Party.

'Limit of Liability' is the maximum amount of liability of the Consultant under this Agreement, as set out in clause 7.3.

'Parties' means the Consultant and the Client and **'party'** shall mean either the Client or the Consultant.

'Price' means the set of rates and associated budget estimate or lump sum price detailed in the Proposal or as otherwise agreed in writing by the Parties.

'Proposal' means the proposal(s) submitted by the Consultant detailing the Services that the Consultant intends to provide for the Client.

'Relevant Information' means all information in the possession or control of the Client or otherwise available to the Client relating to its operations and sites, including but not limited to relevant environmental data, environmental procedures, legislative compliance, energy systems, waste and water management, transport and procurement, together with all plans, surveys, reports, previous geotechnical or environmental investigations and any other relevant data known to the Client.

'Report' means the report(s) created by the Consultant describing the result of the Services and related matters.

'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.

'Services' means the services described in the Proposal and all other work performed by the Consultant pursuant to this Agreement.

'Site' means the area(s) in which the Services or any part of the Services are to be provided by the Consultant and as detailed in the Proposal.

1. CONSULTANT'S DUTIES

1.1 Subject to the terms of this Agreement, the Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and in accordance with the standards of a qualified and competent environmental consultant experienced in carrying out work of a similar scope and complexity to the Services and current at the time when the Services are performed.

1.2 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, environmental or health and safety 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, the Consultant shall notify the Client promptly of the costs of such variations and the Client shall pay such additional costs incurred at the rates set out in the Price, or for such agreed sum as is agreed between the Parties in writing.

1.3 The Consultant will take all reasonable precautions to avoid damage to property belonging to the Client or any third party, subject always to clauses 2.1 and 7.3.



1.4 The Consultant may use sub -contractors, sub-consultants and/or agents to perform part of the Services. In such event, the Consultant shall exercise all reasonable care to ensure that such sub -contractors, sub-consultants and/or agents are appropriately skilled and experienced in relation to the work, which they are instructed to carry out.

1.5 The Client acknowledges that the Services and the Service Products will not necessarily 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.

2. CLIENT'S OBLIGATIONS

2.1 The Client acknowledges that in agreeing to provide the Services, the Consultant has relied upon the Client to make full disclosure of all Relevant Information. The Client shall transmit promptly to the Consultant any new Relevant Information, which becomes available or any other information, which may materially affect the Services.

2.2 The Client shall 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.

2.3 The Client shall, at its own expense, promptly provide free access to the Site or where the Client is not the Site owner, use its best endeavours to procure such access. The Client shall also provide or procure any permits or other clearances reasonably required by the Consultant to carry out the Services.

2.4 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.

3. USE OF RELEVANT INFORMATION

All Relevant Information shall be returned to the Client after use or completion of the Services by the Consultant or termination of this Agreement under clause 11, provided that the Consultant shall have the right to take copies of any Relevant Information for its own records, subject to the confidentiality obligations set out in clause 6.

4. COPYRIGHT IN SERVICE PRODUCTS, RELIANCE ON REPORTS AND ASSIGNMENT

4.1 Copyright and all intellectual property rights in Service Products shall remain vested in the Consultant at all times.

4.2 After payment of the Price, the Consultant shall grant the Client a royalty-free licence to reproduce the Report for the Client's own use, provided always that the Report shall be used exclusively for its originally intended purpose as stated by the Consultant in the Report.

4.3 The Client may without further charge make the Report available to any third party provided that such third party may not rely upon the Report unless it enters into a Reliance Agreement under clause 4.4.

4.4 No third party may make any reliance on the Report in whole or in Part unless the Consultant, at its discretion and by prior arrangement with the Client, enters into an agreement ('Reliance Agreement') with the third party who agrees, inter alia, to be bound by the same conditions and limitations as the Client, following which (subject to payment of any fees due to the Consultant by the third party) the third party shall be entitled to rely upon such Report exclusively for its originally intended purpose. The Consultant has the right to charge the Client an administration fee for entering into the Reliance Agreement.

4.5 The Client may without charge make the Report available to any person or persons for whom the Client is acting in a professional capacity in relation to the Report provided that such person or persons accepts all of these Conditions of Contract in their entirety.

5. CONFIDENTIALITY

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 except as permitted in this Agreement. This duty of confidentiality shall not apply to information which a Party can show by reasonable documentary proof: (a) to have been in the public domain at the time of

receipt by such Party; or (b) to have become known to the public through no fault of such Party after receipt thereof; (c) or is required to be disclosed pursuant to applicable laws or a legally binding order of any competent judicial governmental or regulatory body. Before the disclosure of any information pursuant to clause 5.1 (c), the disclosing Party will (to the extent permitted by law) inform the other Party of the circumstances and the details of the information to be disclosed at the earliest possible opportunity.

6. PAYMENT

6.1 Unless agreed in writing by the Parties (where it may be agreed that an advance or part payment shall be made prior to or during the performance of the Services) the Consultant shall submit invoices on completion of the Services.

6.2 Where it has been agreed that the Consultant shall receive an advance payment prior to the commencement of the Services but the Client subsequently decides not to proceed, or is unable to proceed with the Services, then the Consultant shall refund the advance payment less any costs incurred by the Consultant.

6.3 The Client shall pay for invoices no later than thirty (30) days after the invoice date.

6.4 The Client shall be liable to pay interest on overdue accounts at two percent above the rate charged by Royal Bank of Scotland.

6.5 VAT shall be payable in addition to the Price.

6.6 In order to continually improve the quality of our work, Olive will actively seek feedback prior to submitting an invoice for work completed. A formal monthly summary report of project progress can be provided on request.

7. LIABILITY OF THE CONSULTANT

7.1 Subject to the other sub-clauses of this clause 7, 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 failure of the Consultant or any subconsultant, sub-contractor or agent to carry out the Consultant's Duties in accordance with Clause 1. 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 with sixty (60) days of the Client becoming aware of them.

7.2 The Consultant's liability under this Agreement shall end six (6) years from the date when the Services were completed.

7.3 The aggregate Limit of Liability arising directly or indirectly from the Services and this Agreement whether under contract, tort or any other legal basis is two million pounds (£2,000,000).

7.5 Neither Party shall be liable to the other for any loss of profit, loss of revenue, business interruption, or any indirect or consequential losses incurred by the other Party, 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 this Agreement.

7.6 Nothing herein shall exclude or limit the 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 negligent errors, acts or omissions.

8. INSURANCE

The Consultant maintains professional indemnity insurance provided such insurance is available in the market at commercially reasonable rates and terms, in respect of the Services and shall upon request provide evidence that such insurance coverage is provided up to the Limit of Liability.

9. FORCE MAJEURE

9.1 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 any difficulties thereby arising and shall resume their respective obligations under this Agreement as soon as is reasonably possible.

9.2 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 together with all expenses reasonably incurred by or accruing to the Consultant during the Force Majeure period.



10. TERMINATION

10.1 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 to the other specifying the default and referring to this clause, and the default has not been remedied prior to termination taking place.

10.2 The Consultant may by written notice terminate this Agreement immediately if the Client has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or enters into liquidation (whether voluntary or compulsory) or if any proceedings are commenced relating to the insolvency or possible insolvency of the Client.

10.3 In the event of termination for any cause whatsoever, the Consultant shall be entitled to be paid for Services performed up to the date of termination.

11. NOTICES

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

- (a) by post, four days after posting within the United Kingdom or within (b) ten days for posting outside the United Kingdom;
- (c) by hand, at the time of delivery.

12. SEVERABILITY

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.

13. THIRD PARTY RIGHTS

This Agreement shall not confer and shall not purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 or right to rely on any Report unless the Consultant has entered into a Reliance Agreement with that third party in accordance with clause 4.4.

14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1 If at any time any dispute, which cannot be settled amicably, arises between the Client and the Consultant in relation to this Agreement or in any way connection with the Services, the dispute shall be submitted to arbitration by a sole arbitrator. If the Parties cannot within fourteen (14) days of a proposal to do so, agree on an arbitrator, then the sole arbitrator shall be appointed by the President for the time being of the Institute of Environmental Management and Assessment. The arbitration shall take place in London and shall be conducted in English and according to the laws of England and Wales.

15.2 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

15. ENTIRE AGREEMENT

15.1 This Agreement constitutes the entire agreement and understanding between the Parties.

15.2 The Client acknowledges that it has had an opportunity to negotiate changes to these Conditions of Contract for Environmental Consultancy Services and has agreed to these Conditions of Contract.

Version: T&C ECS 1.2

Dated 6th May 2010



SCHEDULE 1: TRAINING TERMS & CONDITIONS

The below terms and conditions apply to any agreement for the supply of training services by the Olive Consultancy (Olive). Unless otherwise agreed in advance in writing by both parties, Olive's terms and conditions for the supply of training services are detailed below. In all other respects, unless clearly stated herein Olive's standard terms and conditions also apply (as outlined above).

1.1 REGISTRATION

A booking form must be completed and submitted to Olive prior to the scheduled date of the open training course. This can be through completion of an electronic booking form via the Olive website at www.consultolive.com or completion of the Word document booking form which can be submitted to Olive via fax, post or as an email attachment.

Upon receipt of a completed booking form, a booking confirmation will be issued via email to the contact named on the booking form. Full payment of all course fees is required in advance of attending the course. Once full payment has been received, payment confirmation and joining instructions will be issued (by email unless otherwise agreed). We recommend that delegates do not make travel and hotel accommodation arrangements without this confirmation.

If, at the client's request, information is sent to a Company's training department, Olive cannot accept any liability for information which is not passed by the training department to a delegate.

1.2 PAYMENT TERMS & METHODS

Standard payment terms are 30 working days from invoice date. Bookings made less than 10 working days before the scheduled training course date should be paid for in full at the time of booking.

Accepted methods of payment are; cheque (made payable to The Olive Consultancy Ltd) or BACS (bank details upon request).

Should payment not be received in good time prior to the event, Olive reserves the right to reallocate the place to an alternative delegate. Notification of space re-allocation will be provided if this is enacted.

1.3 SUBSTITUTION & CANCELLATION

Delegate substitutions are acceptable provided written notice is given prior to course commencement and that the substitute delegate meets all course prerequisites and is approved by Olive in advance.

If notice of cancellation of a booking is received by Olive at least 10 working days before the scheduled course start date a full refund will be given (net of any costs that have already been incurred but which cannot be recovered (e.g. venue hire). **For cancellations received 10 working days or less before the scheduled course start date, no refund will be given, although Olive reserves the right to vary its terms in exceptional circumstances.**

Please note all cancellations must be received in writing (via email is sufficient but you should request a receipt confirmation as evidence. To take effect, a cancellation must also be agreed by Olive in writing.

1.4 CHANGES TO COURSES BY OLIVE

Olive will make all reasonable endeavours to ensure that we do not cancel any training course for which viable levels of bookings and full payment have been accepted. However, in the event of non-availability of the appropriate qualified trainer (e.g. due to illness) and no suitable alternative being available, we reserve the right to cancel or re-schedule a course. We commit that this will only be done "in extremis".

If it becomes necessary for Olive to cancel a course, irrespective of the amount of warning given, attendees will be offered alternative dates. If the alternative dates are not suitable, Olive will refund the booking fee in full. All liability by Olive will be limited to the value of the original course fee.



1.5 CLIENT AND THIRD PARTY PROPERTY

Whilst all efforts are made to ensure our premises are safe and secure, we do not accept liability for theft of or damage to clients' and visitors' property under any circumstances.

Delegates will be held responsible for any damage they cause to our or any third party's property whilst attending an Olive training course and will be expected to make prompt and adequate recompense.

For more information regarding these Terms and Conditions contact:

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2 Venture Road
University of Southampton Science Park
Chilworth
Southampton
SO16 7NP

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Email: info@consultolive.com