

## GROUND INVESTIGATION LTD - TERMS AND CONDITIONS

### 1. GENERAL

All Services are carried out on the basis of the following terms and conditions, unless otherwise agreed in writing.

### 2. INTERPRETATION

In these terms and conditions: "**Customer**" means the party named in the Contract, who employs the Company to undertake the Services and its successors and permitted assigns; "**Company**" means Ground Investigation Limited and its successors and assigns; "**Contract**" means this Master Work Order Agreement comprising the relevant Work Order, these terms and conditions and the attached Special Conditions (if any); "**GST**" means goods and services tax payable in terms of the Goods and Services Tax Act 1985; "**Project**" means the project named in the relevant Work Order for which the Services are to be provided; and "**Services**" means the services to be performed by the Company for the Customer (as set out on the relevant Work Order) and includes any incidental goods expressly contemplated by the Work Order to be provided by the Company in carrying out the Services ("Goods").

### 3. SERVICES

- 3.1 The Company performs the Services solely for the benefit of the Customer with respect to the Project. The benefit of the Services, including any data or opinions contained in any report prepared for the Customer, may not be used in other contexts or for any other purpose without the prior review and agreement of the Company.
- 3.2 The Company shall not be liable for any delay or non-performance arising from or attributable to circumstances beyond its control (including, but not limited to, acts of God, labour disputes, transportation delays and delays in the supply of goods and services by suppliers to the Company) and reserves the right to charge for any such delay whilst on site at the stand-by rate specified in the Special Conditions or otherwise at the average hourly charge-out rate of the Company's personnel who are delayed on site.
- 3.3 The Company shall not be liable for any delay or for exceeding the estimated or quoted price because of non-disclosure or withholding of information relevant to the Project by the Customer or its contractors or agents.
- 3.4 Where the Customer directs that certain specialists supply services as part of the Project, the Company shall be responsible only for the co-ordination of such services and materials into the Project as a whole.
- 3.5 All rights of entry, services information and approvals (other than those expressly required by this Contract to be provided by the Company) required to enable the Company to perform the Services shall be secured by the Customer.
- 3.6 The Company is not responsible for the make good of any damage to surfaces or subsoil arising from any investigative or other works necessary for the performance of the Services, unless otherwise agreed.
- 3.7 The Company will have in place a health and safety management plan for the Services and will comply with any health and safety plan operated by the Customer or third party in control of the site. The Company must be provided with site hazard and safety information, and will not be obliged to commence any work until its personnel have completed a site safety induction.

### 4. QUOTATIONS AND ESTIMATES

- 4.1 The Company shall use its best endeavours to perform the Services at the quoted or estimated price using its current resources. Unless expressly indicated otherwise, the quoted or estimated price:
  - a. assumes the Services will be undertaken during the Company's normal business hours (7.30am to 5pm) Monday to Friday excluding public holidays; and
  - b. does not include any allowance for any site survey work, any traffic management, any concrete coring or pre-drilling, or any earthworks or vegetation clearance (access to the site assumed to be of a reasonable standard and the site reasonably level).
- 4.2 A quoted price for supply of Services is valid for 90 days, and subsequently shall be deemed to be withdrawn.
- 4.3 Where an estimated price is provided, the Customer will receive the full benefit of any lesser cost for the supply of the Services, but the Company reserves the right to charge a higher price where time involved or the costs for the supply of the Services exceed the estimate.

### 5. PAYMENT

- 5.1 Payment for all Services is due on the 20<sup>th</sup> of the month following the date of issue of invoice. In the case of Projects of greater than one month's duration, invoices may be issued on a monthly basis. Interest shall accrue on a daily basis and be payable on all overdue sums at 12% per annum from the date payment is due until the date payment is received in full. The Company also reserves the right to recover from the Customer all expenses and legal costs of the Company (calculated between solicitor and own customer) in relation to obtaining or seeking to obtain remedy of default in payment by the Customer.
- 5.2 All prices quoted or estimated are exclusive of GST. The Customer shall pay at the time when payment is due pursuant to clause 5.1 any GST payable in respect thereof.
- 5.3 If any payment is overdue, the Company may withhold or suspend supply of the Services and the licensing of any rights until such payment is made.

### 6. CONFIDENTIALITY AND PUBLICATION OF RESULTS

- 6.1 The Customer shall provide the Company free of cost with all information about the Project or otherwise relevant to enable the Company to obtain a clear understanding of the Customer's requirements for the Services. The Company shall keep in confidence all confidential information it has received from the Customer except confidential information in the Company's possession prior to receipt from the Customer or which subsequently comes into the public domain (other than as a result of unauthorised disclosure by the Company).
- 6.2 The Customer shall keep in confidence all confidential information it has received from the Company except confidential information in the Customer's possession prior to receipt from the Company or which subsequently comes into the public domain (other than as a result of unauthorised disclosure by the Customer).
- 6.3 The Company shall keep in confidence the results of work undertaken on behalf of, and paid for by, the Customer. Unless otherwise specified, the Customer agrees that any data collected by the Company can be used for research purposes, provided the Customer's name and Project details remain confidential. The Company may publish any data or results with the prior written approval of the Customer.
- 6.4 The Customer shall refer any proposed publication of test results or other work undertaken by the Company to the Company for approval, such approval not to be unreasonably withheld. The Company's approval may be withheld if the Company believes in good faith and on

reasonable grounds that the proposed publication does not completely and accurately represent the results of the work undertaken.

- 6.5 The use of the names, symbols or abbreviations of "Ground Investigation Limited" in conjunction with any proposed marketing of Services shall require the prior written approval of the directors of the Company.

### 7. OWNERSHIP

Any drawings, specifications and other documents provided by the Company are the property of the Company whether the work for which they are made is completed or not. Property in any Goods or the ownership of any data, results or reports provided under this Contract shall pass to the Customer only on the full performance of the obligations of the Customer, including the payment of all amounts payable.

### 8. INTELLECTUAL PROPERTY

Unless otherwise agreed in writing prior to the commencement of this Contract, all intellectual property rights pre-existing or arising from or developed in the course of undertaking the Services shall remain with or vest in the Company.

### 9. LIABILITY & INSURANCE

- 9.1 If all, or any part of, the Services are acquired for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to those Services. The following provisions of this clause 9 apply to the extent permitted by law.
- 9.2 The maximum aggregate liability of the Company in respect of this Contract (whether in contract, tort or otherwise) shall be limited to five times the sum paid by the Customer to the Company for the Services provided (exclusive of GST and disbursements) with a maximum limit of \$500,000.
- 9.3 The Company shall not be liable for any special, indirect, incidental or consequential damages nor for any lost profits or injury arising from the provision of the Services under the Contract.
- 9.4 The Company shall not be liable for damages of any type whatsoever (including all related costs) sustained by or awarded against the Customer or a third party arising from the Customer's or a third party's manufacture, use or sale of any Goods supplied by the Company under this Contract (or any product or process developed from or incorporating the same).
- 9.5 If the Company is found liable to the Customer (whether in contract, tort or otherwise) and the Customer and/or a third party has contributed to the loss or damage, the Company shall only be liable to the proportionate extent of its own contribution.
- 9.6 The Company shall hold and maintain for the duration of the Services public liability insurance for \$1 million and, if the Services require the use of any motor vehicle, motor vehicle liability insurance for \$1 million. The Company will, on request by the Customer, provide certificates evidencing the currency of those insurances.

### 10. TERMINATION

- 10.1 Subject to clauses 10.2 and 10.3, the Contract shall terminate upon the earlier of:
  - a. Completion of the Services by the Company and payment by the Customer; or
  - b. Mutual agreement of the parties
- 10.2 The Company, without liability on its part, shall have the right to cancel the Contract (so far as it remains unperformed) wholly or in part, or any other contract which has not been completed, with immediate effect by giving written notice to the Customer, and all sums outstanding (whether legally demanded or not and whether then due or not) shall become immediately due and payable to the Company if:
  - a. the Customer breaches these terms and conditions, including default in any payment on the due date; or
  - b. the Customer goes into liquidation, bankruptcy, statutory management or receivership or becomes insolvent or unable to pay its debts or enters into an arrangement or composition with its creditors.
- 10.3 The Company may terminate the Contract by notice to the Customer of at least 14 days.
- 10.4 Any termination of the Services shall be without prejudice to the rights of either party in existence prior to termination, in particular for unpaid moneys due to the Company.

### 11. NOTICES

Any notices or other communications to be given hereunder may be delivered personally, or sent by prepaid post or email to the last known address of the addressee and shall be deemed to have been given two working days after posting or, in the case of personal delivery or email, on the date of delivery or email transmission.

### 12. ASSIGNMENT

The Customer shall not assign its rights or obligations hereunder without the prior written consent of the Company. No assignment by the Customer shall be effective unless and until all outstanding amounts are paid to the Company.

### 13. VALIDITY

- 13.1 Failure by the Company to enforce any of these terms and conditions shall not be deemed to be a waiver of any rights or obligations that the Company or the Customer has under this Contract.
- 13.2 Where the terms of this Contract are at variance with the order or instruction from the Customer, these terms and conditions shall prevail.
- 13.3 If any provision of these terms and conditions or the Contract shall be invalid, void, illegal or unenforceable, the validity of the remaining provisions shall not be affected, prejudiced or impaired.

### 14. DISPUTE RESOLUTION

The parties will in good faith in the first instance use their best endeavours to resolve any dispute themselves. If the dispute cannot be resolved by the parties themselves within a reasonable time, they must explore whether the dispute can be resolved by use of mediation or other alternative resolution technique. If the dispute is not so resolved within a reasonable time, either party may refer the dispute to arbitration by a sole arbitrator under the provisions of the Arbitration Act 1996. The arbitrator will be appointed by agreement between the parties within 15 working days of written notice of referral by the referring party to the other or, failing agreement, by the President of the Arbitrators and Mediators Institute of New Zealand or his or her nominee. Nothing in this section 13 shall prevent either party initiating court proceedings seeking urgent interlocutory relief.

### 15. GOVERNING LAW

This Contract shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts who may hear appeals therefrom.