

W L Straughan & Son Limited Terms and Conditions of Supply

The Customer's attention is particularly drawn to the provisions of clause 9.

1. Interpretation

1.1 Definitions

In these Conditions, the following definitions apply:

Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Commencement Date	the date on which the Contract is formed between WLS and the Customer as set out in clause 2.2;
Conditions	these terms and conditions as amended from time to time in accordance with clause 12.7;
Contract	the contract between WLS and the Customer for the supply of Services and/or Materials in accordance with the Quote and these Conditions;
Customer	the person or firm who purchases the Services and/or Materials from WLS;
Customer Default	any act or omission by the Customer or failure by the Customer to perform any relevant obligation;
Customer's Site	the location where the Customer requires the Services to be performed and/or the Materials to be delivered set out in the Quote;
Force Majeure Event	an event beyond the reasonable control of WLS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of WLS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
Intellectual Property	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to
Rights	sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Key Deliverables	the key deliverables set out in the Quote;
Materials	the materials and goods (or any part of them) set out in the Quote;
Quote	the quote for Services and/or Materials provided by WLS to the Customer subject to these Conditions;
Service Specification	the description or specification for the Services set out in the Quote;
Services	the services, including the Key Deliverables, supplied by WLS to the Customer set out in the Quote;
WLS	W. L. Straughan & Son Limited in England and Wales with company number 04608938 whose registered office is at Lane Farm, Bedlington, Northumberland, NE22 6AA; and
WLS Property	all materials, equipment, documents and other property of WLS.

1.2 Construction

In these Conditions, the following rules apply :

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 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; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Contract

- 2.1 The Quote constitutes an offer by WLS to supply Services and/or Materials in accordance with these Conditions and is only valid for a period of 30 calendar days from its date of issue.
- 2.2 The Quote shall only be deemed to be accepted when the Customer confirms acceptance by email, phonecall or course of dealing at which point and on which date the Contract shall come into existence. No amendments to a Quote shall be effective unless agreed in writing between the parties.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of WLS which is not set out in the Contract. In the case of conflict between the terms set out in the Quote and those Conditions, the terms set out in a Quote shall prevail.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by WLS and any illustrations or descriptions of the Services contained in WLS's catalogues, brochures or on WLS's website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Materials described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Materials

- 3.1 WLS reserves the right to substitute any Materials that are unavailable at the point of purchase for other materials equivalent as far as reasonably possible in colour, texture, purpose and design or to amend the specification of the Materials if required by any applicable statutory or regulatory requirements.

- 3.2 The Materials shall be delivered to the Customer's Site (or such other address agreed in writing by the parties) on or before the date the Services are due to commence which require such Materials. Where Materials are delivered prior to the date Services are due to commence the Customer shall keep such Materials fully insured against all risks for their price set out in the Quote.
4. **Supply of Services**
- 4.1 WLS shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 4.2 Where WLS deems appropriate, WLS shall provide a risk assessment and method statement in relation to the Services.
- 4.3 WLS shall use reasonable endeavours to meet any performance dates for the Services specified in the Quote but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 4.4 WLS shall comply with and follow any reasonable instructions of the Customer when at the Customer's Site.
- 4.5 WLS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and WLS shall notify the Customer in any such event.
- 4.6 WLS warrants to the Customer that the Services will be provided using reasonable care and skill.
5. **Customer's Obligations**
- 5.1 The Customer shall:
- 5.1.1 ensure that the terms of the Quote and (if submitted by the Customer) any specification are complete and accurate;
- 5.1.2 co-operate with WLS in all matters relating to the Services;
- 5.1.3 provide WLS, its employees, agents, consultants and subcontractors, with access to the Customer's Site and other facilities as reasonably required by WLS to provide the Services including without limitation water and electricity supply;
- 5.1.4 provide WLS with such information and materials as WLS may reasonably require to supply the Services, and ensure that such information is accurate in all material respects including, where appropriate, service drawings for excavation, details of site security and traffic management;
- 5.1.5 prepare the Customer's Site for the supply of the Services (if applicable);
- 5.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and advise WLS in advance of any special or statutory Bylaws, conditions and/or permissions that may be required or must be adhered to;
- 5.1.7 advise WLS in advance of any underground hazards, obstructions or services which WLS could not reasonably know about from a visual inspection of the Customer's Site;
- 5.1.8 (where applicable) keep and maintain the WLS Property at the Customer's premises in safe custody at its own risk, maintain WLS Property in good condition until returned to WLS, and not dispose of or use WLS Property other than in accordance with WLS's written instructions or authorisation; and
- 5.1.9 advise WLS in advance of any underground hazards, obstructions or services which WLS could not reasonably be aware of from a visual inspection only of the Customer Site.
- 5.2 If WLS's performance of any of its obligations under this Contract is prevented or delayed as a result of Customer Default:
- 5.2.1 WLS shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays WLS's performance of any of its obligations;
- 5.2.2 WLS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from WLS's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- 5.2.3 the Customer shall reimburse WLS on written demand for any costs or losses sustained or incurred by WLS arising directly or indirectly from the Customer Default.
6. **Charges and Payment**
- 6.1 The price for Services and/or Materials shall be the price set out in the Quote. The price of the Materials is exclusive of all costs and charges of packaging, insurance and transport of the Materials.
- 6.2 In respect of Services and Materials, WLS shall invoice the Customer in accordance with the Quote.
- 6.3 The Customer shall pay each invoice submitted by WLS within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by WLS, and time for payment shall be of the essence of the Contract.
- 6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by WLS to the Customer, the Customer shall, on receipt of a valid VAT invoice from WLS, pay to WLS such additional amounts in respect of VAT as are chargeable on the supply of the Services or Materials at the same time as payment is due for the supply of the Services or Materials.
- 6.5 If the Customer fails to make any payment due to WLS under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. WLS may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by WLS to the Customer.
7. **Changes to Service Specification**
- 7.1 WLS reserves the right to make any necessary amendments to the Service Specification in the event that:
- 7.1.1 no service drawings are provided;
- 7.1.2 the Materials set out in the Quote are no longer available and therefore replacement Materials are required.
- 7.2 In the event of such a change, WLS reserves the right to make any resulting changes to the price under the Contract.

8. Confidentiality

A party (**receiving party**) shall keep in strict confidence the price of the Services and/or Materials, all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.

9. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude WLS's liability for:

- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 9.1.5 defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1:

- 9.2.1 WLS shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- 9.2.2 WLS's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid by the Customer to WLS for the Services and Materials under this Contract.

9.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

10. Termination

10.1 Without affecting any other right or remedy available to it, either party to this Contract may terminate it with immediate effect by giving written notice to the other party if:

- 10.1.1 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten days after being notified in writing to do so;
- 10.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 10.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

10.2 Without affecting any other right or remedy available to it, WLS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than ten days after being notified to make such payment; or

10.3 On termination of this Contract for whatever reason:

- 10.3.1 the Customer shall immediately pay to WLS all of WLS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, WLS may submit an invoice, which shall be payable immediately on receipt;
- 10.3.2 termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- 10.3.3 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. Force Majeure

11.1 WLS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.2 If the Force Majeure Event prevents WLS from providing any of the Services and/or Materials for more than 4 weeks, WLS shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12. General

12.1 **Assignment and other dealings.**

- 12.1.1 WLS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 12.1.2 The Customer shall not, without the prior written consent of WLS, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

12.2 **Notices**

- 12.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

12.3 **Severance**

12.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by WLS.

12.8 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).