

**Osmonds Transport & Planing Limited –
Terms and Conditions for the Purchase of Services**

1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions.

Definitions:

Business Day	a day other than a Saturday, Sunday, or public holiday in England and Wales, when banks in London are open for business.
Charges	the charges payable by the Customer for the supply of the Services in accordance with clause 6 (Charges and payment).
Commencement Date	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 12.5.
Contract	the contract between the Customer and the Supplier for the supply of Services in accordance with these Conditions.
Control	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Customer	Osmonds Transport and Planing Limited registered in England and Wales with company number 04558306 with its registered office at 4 Bloors Lane, Rainham, Gillingham, Kent, ME8 7EG.
Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.
Mandatory Policies	the Customer's business policies and codes listed in Schedule 1.
Order	the Customer's order for the supply of Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
Premises	the location where the Supplier is required to provide the Services
Road Materials	the road surface materials which are taken up during the process of the Supplier providing the Services.
Services	the services as set out in the Customer's Order or otherwise agreed in writing between the parties, including any Deliverables, to be provided by the Supplier under the Contract.
Supplier	the company or entity from whom the Customer purchases the Services.

1.2 A reference to legislation or a legislative provision:

1.2.1 is a reference to it as amended, extended or re-enacted from time to time; and

- 1.2.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to **writing** or **written** excludes fax but not email.
- 1.5 In the event of any conflict between these Conditions and the Order, the terms of these Conditions will prevail.

2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- 2.2.1 the Supplier issuing written acceptance of the Order; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any verbal acceptance of the Order will be followed up by written confirmation.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3 SUPPLY OF SERVICES

- 3.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates. In providing the Services, the Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

- 3.2.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 3.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- 3.2.4 ensure that the Services will conform with all descriptions, standards and specifications agreed between the parties, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- 3.2.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 3.2.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- 3.2.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 3.2.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with the Mandatory Policies;
- 3.2.9 observe all health and safety rules and regulations and any other security requirements that apply at the Premises;
- 3.2.10 only permit those of the Supplier's personnel who have a need to do so for the purpose of providing the Services to have access to the Premises and the Customer reserves the right to require the immediate removal of any of the Supplier's personnel from the Premises;
- 3.2.11 not do or omit to do anything which may cause damage at the Premises or to any materials or property, including vehicles and machinery, at the Premises while providing the Services and in any event shall notify the Customer immediately on becoming aware of any damage caused by the Supplier or its personnel to the Premises, to any other property or any other person in the course of providing the Services;

- 3.2.12 notify the Customer as soon as practicable of any health and safety incidents or material health and safety hazards that it is aware of at the Premises; and
- 3.2.13 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

4 CUSTOMER REMEDIES

4.1 If the Supplier fails to perform the Services by the applicable dates and any other deadline the Customer communicates to the Supplier, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- 4.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 4.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 4.1.3 purchase substitute services from elsewhere and recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
- 4.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- 4.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

4.2 If the Supplier has supplied Services that do not comply with the requirements of clause 3.2.4 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights:

- 4.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 4.2.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- 4.2.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;

- 4.2.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 4.2.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
 - 4.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 3.2.4.
- 4.3 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.4 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

5 TITLE IN ROAD MATERIALS

Where the parties have agreed that the Supplier will take title to the Road Materials, title and risk in the Road Materials shall pass to the Supplier upon the Supplier removing the Road Materials and loading the Road Materials for transportation.

6 CHARGES AND PAYMENT

- 6.1 The Charges for the Services shall be set out in the Supplier's price list made available to the Customer, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier

such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 6.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- 6.7 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 7.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence during the term of the Contract to copy and modify the Deliverables for the purpose of receiving and using the Services and the Deliverables.

8 INDEMNITY

- 8.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

8.1.1 any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and

8.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services.

8.2 This clause 8 shall survive termination of the Contract.

9 INSURANCE

During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10 TERMINATION

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

10.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

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;

10.1.4 there is a change of Control of the other party; or

10.1.5 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 the Contract has been placed in jeopardy.

11 CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason or on expiry, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12 GENERAL

12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for two weeks, the party not affected may terminate the Contract by giving seven (7) days' written notice to the affected party.

12.2 Assignment and other dealings.

12.2.1 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.2.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

12.3 Confidentiality.

- 12.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3.2.
- 12.3.2 Each party may disclose the other party's confidential information:
- 12.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - 12.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.5 **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 the parties or their authorised representatives.
- 12.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract

is deemed deleted under this clause 12.7, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.

12.8 **Notices.**

12.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

12.8.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.8.1.2 sent by email to the address specified in the Order.

12.8.2 A notice or other communication shall be deemed to have been received:

12.8.2.1 if delivered by hand, at the time the notice is left at the proper address;

12.8.2.2 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;

12.8.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

12.8.3 In this clause 12.8.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.8.4 This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9 **Third party rights.**

12.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1

Mandatory Policies

Customer's Sub-Contractor questionnaire.

