



## Materials Testing and Technical Services Ltd

Unit 10, Kingsmill Business Park  
Chapel Mill Road  
Kingston upon Thames  
Surrey  
KT1 3GZ  
Tel: 0208 549 4873  
www.mttsltd.co.uk

### Materials Testing and Technical Services Ltd (MTTS Ltd) Standard Terms and Conditions of Service

#### 1. GENERAL

- (a) In these terms "MTTS Ltd" shall mean Materials Testing and Technical Services Ltd contracts to provide the Services and, where the context allows, including, but not limited to Clause 6 below in respect of indemnities given and received, shall also include all MTTS Ltd Affiliates, joint-venture partners and sub-contractors. The "Customer" shall mean the company contracting with MTTS Ltd and, where the context allows, including, but not limited to Clause 6 below in respect of indemnities given and received shall also include such company's Affiliates, co-venturers and other contractors.
- (b) The specialised services, equipment (on sale and/or rental) and personnel the details of which are set out in MTTS Ltd Price List, Work Order, proposal, or other document to which these terms relate ('the Services') are provided by MTTS Ltd on these terms which override and exclude any other terms stipulated or incorporated either orally or in writing by the Customer. All contracts hereafter made between the Customer and MTTS Ltd shall, except to the extent agreed otherwise, be deemed to be made subject to these terms.
- (c) The Customer acknowledges that there are no representations either oral or written outside these terms which have induced it to enter into the Contract (which expression shall include any contract of which these terms form part) and these terms, together with any particular terms specified on a Work Order, proposal or other related document, which shall take precedence, shall constitute the entire understanding between the parties for the supply of the Services.



## Materials Testing and Technical Services Ltd

---

- (d) No modification of these terms shall be effective unless made by an express written agreement between the parties. The signing by MTTS Ltd of any of the Customer's documentation shall not imply any modification of these terms.
- (e) Any provision or provisions of these terms which shall prove to be invalid, void, unenforceable or illegal, in any respect under any law, shall in no way affect, impair or invalidate any other provisions and the remaining provisions hereof shall remain in full force and effect.
- (f) MTTS Ltd shall be an independent contractor and not the employee or agent of the Customer, but in the performance of the Services MTTS Ltd shall act under the direction and control of the Customer who shall be responsible for ensuring the health and safety of all operations involving MTTS Ltd personnel.
- (g) "Affiliate" shall mean any company which is a subsidiary or holding company of the relevant company or another subsidiary of any such holding company, where "subsidiary" and "holding company" shall have the meanings assigned to them under Section 736 of the Companies Act 1985.
- (h) MTTS Ltd reserves the right to terminate its Services and remove its equipment and personnel from any worksite at any time if in its opinion such action is advisable because of conditions affecting the Services being performed or other surrounding circumstances.

### 2. CHARGES

- (a) Unless specified otherwise in the Contract, the charges payable by the Customer shall be those specified in MTTS Ltd's Price List current at the date Services are performed. MTTS Ltd reserves the right to alter its Price List at any time without notice to the Customer.
- (b) All charges are calculated on the basis that the Customer accepts these terms and they may therefore be increased by MTTS Ltd if the Customer refuses to accept all or any of these terms.
- (c) Any tax assessed on or calculated on the basis of the charge made for, or cash received from, the rendering of the Services shall be paid by the Customer. This provision includes VAT where applicable but does not include taxes based on MTTS Ltd net income.
- (d) Unless otherwise agreed, charges do not take account of local taxes including, without limitation, withholding tax, which may be levied on



## Materials Testing and Technical Services Ltd

---

MTTS Ltd in respect of the Services. The Customer agrees to pay or reimburse MTTTS Ltd the amount of such local taxes levied on MTTTS Ltd.

- (e) If an operation is attempted but cannot be completed due to exceptional circumstances or if an operation is cancelled by the Customer after the personnel and/or equipment have left MTTTS Ltd base, the Customer shall be charged as if the Services had actually been performed and/or for the time the equipment and the personnel are absent from the MTTTS Ltd base.
- (f) Charges for the supply of equipment on rental and personnel are quoted at a daily rate which is payable from the time the equipment is dispatched or the personnel depart from MTTTS Ltd's base until return to that same base. A day shall commence and terminate at midnight local time and the full daily rate shall be payable in respect of any part day.
- (g) Charges do not include the supply of consumables not normally supplied in performing the Services.
- (h) All expenditure incurred by MTTTS Ltd on behalf of the Customer for reimbursement by the Customer will be subject, unless specified otherwise in the Contract, to a 10 per cent surcharge for administration and handling.

### 3. PAYMENT

- (a) The Customer shall pay for the Services provided by MTTTS Ltd within 30 days of the date of the invoice. Payment shall be made in whichever currency may be agreed between the parties to MTTTS Ltd bank account shown on the invoice. The Customer shall be responsible for obtaining all necessary exchange control consents.
- (b) Except as may be specified otherwise in the Contract, invoicing shall be in accordance with the current Price List. In the case of temporary interruption of work due to force majeure as described in these terms below, invoicing shall continue as if the interruption or waiting time were due to the Customer's own orders, and the Customer shall pay in accordance with the invoices.
- (c) If any portion of an invoice is disputed, the Customer shall pay the undisputed portion and thereafter and in good faith negotiate a settlement of the disputed portion.



- (d) Interest on all sums due after 30 days from the date of the invoice shall run at the rate of 1½ per cent per month or part thereof until payment is received.

#### 4. SUPPLY OF EQUIPMENT

- (a) Equipment supplied by MTTTS Ltd on rental for the Services shall normally be included in MTTTS Ltd's current Price List. Should MTTTS Ltd supply MTTTS Ltd-owned equipment not included in the Price List then the rental will be agreed by negotiation, with 2½% of the purchase price as a minimum daily charge. If the Customer requests MTTTS Ltd to hire equipment from a third party the Customer shall pay MTTTS Ltd the hire charges plus a 10 per cent surcharge to cover administration costs. Equipment supplied on sale shall be at prices to be agreed.
- (b) Where a Customer orders equipment on rental, but cancels prior to mobilization to the site, MTTTS Ltd shall charge the Customer two days rental for equipment preparation and certification.
- (c) Equipment supplied on a continuous rental basis will be charged at reduced rates as may be agreed with the Customer. However, should MTTTS Ltd's equipment supplied under a long term contract to the Customer be released by the Customer before the contract expiry date, the Customer shall be liable to pay such agreed charges due for the entire remaining contract period or at Price List rates for the time the equipment has been utilised, whichever is the lower total cost.
- (d) The Customer shall provide at its own cost or reimburse MTTTS Ltd at cost plus 10% for transport for the equipment from MTTTS Ltd's base to the area of operation and return including craneage, freight, handling, insurance and other such charges including, without limitation, customs fees, import and export taxes. If transportation or handling are provided directly by MTTTS Ltd using its own vehicles or handling plant the Customer will be charged at the rates indicated in the current Price List.
- (e) The Customer shall be responsible for and shall pay customs documentation charges in respect of all outgoing and incoming equipment. Should any such charges be paid by MTTTS Ltd, the Customer shall reimburse MTTTS Ltd such charges plus 10 per cent to cover MTTTS Ltd's administration costs.
- (f) Maintenance and repair of equipment on rental is carried out by MTTTS Ltd and time spent on routine maintenance and repair at the



Customer's work site before and after each operation will be charged as time worked for the Customer. In cases where equipment has been on location without being operated for long periods, special visits for maintenance purposes may be necessary. Personnel for this work are charged to the Customer at normal rates and transportation shall be for the Customer's account.

- (g) Other than whilst under the full control of MTTTS Ltd risk of loss or destruction or damage to equipment supplied to the Customer on rental is the Customer's responsibility and shall be charged for at repair or replacement cost as appropriate. Where equipment is lost, destroyed or damaged in such circumstances, rental charges shall continue up to the time settlement has been received by MTTTS Ltd in regard to the replacement cost or cost of repair.
- (h) In all circumstances that MTTTS Ltd supplies equipment to the Customer on rental, the Customer shall also be responsible for all spare parts consumed (including cost of transport from MTTTS Ltd's base to the area of operation) except for those required in the course of maintenance due to normal wear and tear. In this connection normal wear and tear excludes the effects of corrosion, erosion, abrasion or high temperature deterioration caused by the nature of extreme environmental conditions and Customer shall reimburse MTTTS Ltd in full for repair and replacement of equipment as necessary as a result of such causes.
- (k) Unless otherwise agreed, the Customer shall at its own expense furnish MTTTS Ltd with electricity, compressed air, steam, fuel and water as required to operate the equipment.

### **5. SUPPLY OF OPERATING PERSONNEL**

- (a) The Customer shall be responsible for and provide at its own cost or reimburse MTTTS Ltd at cost plus 10% for transporting personnel from MTTTS Ltd's base to the area of operation and return. If transportation is provided directly by MTTTS Ltd using their own vehicles, the Customer will be charged at the rates indicated in the current Price List. The Customer shall be responsible for all costs of maintaining MTTTS Ltd's personnel on location including food, lodging, medical, laundry and other incidental expenses whilst the personnel are hired to the Customer. Travelling time and waiting time are charged as normal operating time.



- (b) Personnel normally work 8 hours per day and minimum charges are based on this figure. MTTSLtd shall be entitled to make overtime charges where in MTTSLtd's opinion excessive overtime is necessary due to the workload. In the interests of safety and efficiency, personnel should not work longer than 12 hours per day on extended programmes. When necessary, agreement should be reached for any temporary or permanent increase in the number of personnel to alleviate the overtime problem.
- (c) MTTSLtd shall pay all salaries and other compensations to its personnel and be responsible for all costs for employer's liability insurance and other legally required employee benefits. Insurance Certificates will be furnished to the Customer on request.

### **6. LIABILITIES AND INDEMNITIES**

- (a) MTTSLtd shall be responsible for and shall indemnify and hold harmless the Customer, its officers, employees and agents from and against all claims, liens, judgments, penalties, awards, remedies, debts, liabilities, demands, costs, damages, losses, expenses and causes of action of every kind and nature, including without limitation, those made or enjoyed by dependants, heirs, claimants, executors, administrators, successors, survivors or assigns (all hereinafter referred to as "Claims") in any way relating to the performance or non-performance of the contract resulting from personal injury, death and disease, of any of MTTSLtd's officers, employees or agents, irrespective of any negligence or breach of duty, statutory or otherwise, on the part of the parties indemnified herein.
- (b) The Customer shall be responsible for and shall indemnify and hold harmless MTTSLtd, its officers, employees and agents from and against all Claims in any way relating to the performance or non-performance of the contract resulting from:
  - (i) personal injury, death and disease, of any of the Customer's officers, employees or agents, and
  - (ii) loss of, loss of use or recovery of or damage to the Customer's equipment and other property and the property of its officers, employees and agents

irrespective of any negligence or breach of duty, statutory or otherwise, on the part of the parties indemnified herein.



## Materials Testing and Technical Services Ltd

---

- (c) The Customer shall be responsible for and shall indemnify and hold harmless MTTTS Ltd, its officers, employees and agents from and against all Claims resulting from:
- i) personal injury, death and disease, and
  - ii) loss of, loss of use or recovery of or damage to property
- of third parties, unless caused solely by the negligence in any form of MTTTS Ltd, its officers, employees or agents, in which event MTTTS Ltd shall be liable up to a value of £1,000,000 (One million pounds sterling).
- (d) The Customer shall maintain adequate insurance to cover its aforementioned obligations and shall procure that its insurers shall have no right by subrogation or otherwise to take any proceeding against MTTTS Ltd, its officers, employees or agents, for any sum for which the Customer is liable under the indemnities set out above.
- (e) In no event shall either MTTTS Ltd or the Customer be liable one to the other for any indirect or consequential losses including but not limited to loss of use, loss of production, loss of profits, loss of anticipated profits, loss of revenue or business interruption irrespective of any negligence or breach of duty, statutory or otherwise, on the part of the party absolved of its liabilities hereunder.

### 7. RISK AND TITLE

- (a) Equipment on rental shall remain the property of MTTTS Ltd (except as may be hired from a third party) and the Customer shall not sell, mortgage, pledge, assign, sublet, hire, charge, encumber or part with the possession of such equipment except as may be agreed between the parties in writing.
- (b) Equipment on sale to the Customer shall become the Customer's responsibility on delivery. Notwithstanding the foregoing, property in such equipment shall remain with MTTTS Ltd until full payment of all monies owed to it by the Customer for such equipment have been received.

### 8. WARRANTY

- (a) The Customer warrants that prior to the commencement of the Services the Customer will provide MTTTS Ltd with all data, information and records relating to the worksite and surrounding and subsurface





## Materials Testing and Technical Services Ltd

---

conditions and otherwise which may be relevant to enable MTTs Ltd's safe and efficient provision of the Services.

- (b) MTTs Ltd does not promise or guarantee the results of its Services. All conditions, warranties or representations whether express or implied relating to the accuracy of results obtained, interpretations made, conclusions drawn or any matters reported in connection with the Services are hereby disclaimed.
- (c) MTTs Ltd warrants that the Services it supplies are free from defects in workmanship and materials. Where the Services include equipment supplied on sale to the Customer this warranty shall expire twelve (12) calendar months after the date of delivery. This warranty is exclusive of any other liability, particularly in respect of any damages suffered because of the defective Services.
- (d) The foregoing warranty applies providing that the equipment is correctly used for the purpose for which it was designed and is properly installed and maintained (if such installation and maintenance is not by MTTs Ltd) and is not altered (other than by MTTs Ltd) after delivery. With respect to materials or equipment furnished by third-party suppliers, MTTs Ltd's liability therefore shall be limited to the assignment to the Customer, if possible, of such third party supplier's warranty to MTTs Ltd.
- (e) Customer shall notify MTTs Ltd promptly if any aspect of the Services is found to be defective, with a report detailing failure and defects. MTTs Ltd will repair the equipment found to be defective or, at its option, replace such equipment and shall re-perform any defective Services. MTTs Ltd, however, shall under no circumstances be liable for neither any consequential effects of such defective Services nor any costs relating to the dismantling of equipment and installation thereof, transportation of the equipment and personnel to, from and at the location, lifting operations, and any other such incidental or associated costs.
- (f) Except as stated herein, MTTs Ltd makes no express or implied warranties as to any matter whatsoever, including, without limitation, warranty of satisfactory quality and fitness for a particular purpose. Customer's sole remedy and MTTs Ltd's sole obligation arising out of or in connection with defects in Services which are based on warranty, contract negligence, strict liability, tort or otherwise, shall be as stated in the foregoing paragraph of this warranty statement.





## 9. CONFIDENTIALITY

- (a) All information and results obtained by MTTTS Ltd in the course of supplying the Services to the Customer shall be treated by MTTTS Ltd as strictly confidential. Any technical or commercial information proprietary to MTTTS Ltd which is obtained by the Customer in the course of the contract shall be treated by the Customer as strictly confidential. The confidential information of either party shall not be divulged to any person, or company without the prior written consent of the party to which it belongs. This restriction shall not apply to any confidential information which is at the time of disclosure in the public domain or thereafter becomes part of the public domain other than in consequence of a breach by either party of its obligations under this clause.
- (b) Both parties shall make known such obligations to their other contractors or subcontractors and their respective officers, employees and agents and shall bind them to act in such a manner as to ensure that neither party is in breach of such obligations.

## 10. INTELLECTUAL PROPERTY

- (a) Notwithstanding any other provisions herein to the contrary, all rights to the intellectual property relating to the Services shall at all times remain vested in MTTTS Ltd.
- (b) The Customer shall at no time acquire any rights to such intellectual property or any license relating thereto except to the extent applicable to the use of records or reports provided as part of the Services or equipment purchased or rented from MTTTS Ltd under the Contract and may not copy or imitate any aspect of the Services. Further, the Customer shall not use, license, disclose or reproduce the equipment or any part of the Services in any form without MTTTS Ltd's prior written consent.

## 11. FORCE MAJEURE

MTTTS Ltd shall not be responsible for and shall have no liability in respect of failure of or delay in performance hereunder if such failure or delay is due to any causes which are not reasonably within the control of MTTTS Ltd, including in particular, but without limitation, acts of God, strikes, lock-outs, wars, earthquakes, storms, fires, floods, explosions, hurricanes, arrest and



restraints by any government, civil disturbance, orders, laws or proclamations of government authorities.

### **12. BUSINESS ETHICS**

- (a) The parties shall uphold the highest standards of business ethics in the performance of the Contract.
- (b) Neither party shall knowingly involve itself in any business in connection with, or use information arising from, the Contract, in any manner which conflicts with the interests of the other party. In particular, but without limitation, neither of the parties shall, directly or indirectly, receive, give, or offer to give, anything of material value from or to any employee, director or agent of the other part or its other contractors, sub-contractors and suppliers, government officials or any other persons, which could be regarded as an improper inducement to any party. Any breach of this obligation shall constitute a material breach of the Contract.

### **13. ASSIGNMENT**

Either party may assign its rights under these terms with the prior written consent of the other party.

### **14. WAIVER**

Any failure or delay by MTTSLtd to enforce any or all of these terms against the Customer shall not discharge or in any way affect the liability of the Customer under these terms.

### **15. SURVIVAL OF RIGHTS**

Expiry of the Contract or its termination, howsoever brought about, shall not affect or prejudice Clauses 2, 6, 9 and 10 or any other terms of, or rights conferred by, the Contract which are by implication intended to continue in effect after such expiry or termination.

### **16. GOVERNING LAW**

The Contract of which these terms form a part shall be governed by and interpreted in accordance with English Law and all parties shall submit to the non-exclusive jurisdiction of the courts of England but MTTSLtd may enforce the agreement in any court of competent jurisdiction.



## 17. REPORTING OF SERVICES PROVIDED

(a) If requested, MTTTS Ltd will provide to the Customer free of charge either:

(i) Two paper copies of a report on results and services provided

or

(ii) One paper copy and one electronic copy of a report on results and services provided

Additional copies (both paper and electronic) will be made available to the Customer on request at a charge of £50.00 per copy.