

Hampshire Environmental Services Ltd

Standard Terms and Conditions of Service

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1. Definitions

- 1.1. Where this document uses the following words they shall be defined in accordance with the following:
- 1.1.1. 'H.E.S' – Hampshire Environmental Services Ltd, its divisions, subsidiaries or authorised agents and any other marketing or trade names in use.
- 1.1.2. 'The Client' – Any company, firm, person, or other legal entity which places an order with, or makes use of the services of H.E.S.
- 1.1.3. 'Contract' - H.E.S Terms and Conditions, H.E.S Order Acknowledgement, H.E.S Quote, and any other ancillary documents referred to therein. The order of authority of such documents which compose the Contract shall proceed from highest to lowest precedence in the order listed.
- 1.1.4. 'Quote(s)' – Any official tender, quotation, or proposal made by H.E.S to The Client.
- 1.1.5. 'Authorised Representative' – The Managing Director of H.E.S.
- 1.1.6. 'Terms and Conditions' – The Terms and Conditions contained within this document.

2. Preamble

- 2.1. Herein contain the Terms and Conditions which apply to all Quotes made by H.E.S, and all works undertaken subsequent to the acceptance of any works order or instruction to H.E.S made by The Client.

3. Applicability of Terms and Conditions

- 3.1. These Terms and Conditions shall apply in place of and prevail over any terms and conditions contained or referred to in any communication by The Client or implied by trade, custom or accepted practice. Other terms and conditions which The Client seeks to impose upon H.E.S are expressly rejected unless prior agreement is made in accordance with clause 4.4.

4. Contracts

- 4.1. The Contract shall contain the whole agreement between the parties in respect of the works, and shall supersede any prior written or oral agreement or negotiations between them concerning said works.
- 4.2. The Client shall not, without the prior written consent of H.E.S, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract or these Terms and Conditions.
- 4.3. H.E.S reserves the right to, at any time, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner, with all or any of its rights the Contract or these Terms and Conditions, and may subcontract or delegate in any manner any or all of its obligations thereof to any third party or agent.
- 4.4. Any variations or alterations to the H.E.S standard Terms and Conditions, or any waivers granted for breaches thereof, must be agreed in writing by an Authorised Representative of H.E.S. The Authorised Representative is as described in clause 1.1.5. and is the

only representative of H.E.S with the authority to agree any variations of these Terms and Conditions.

- 4.5. No terms and conditions endorsed on, delivered with, or contained within the Client's instruction, purchase order, order confirmation, specification or other document will form part of the Contract unless it meets the criteria of clause 4.4.
- 4.6. The Client shall provide free of charge all relevant and available information necessary for H.E.S to fulfil its duty under the Contract. H.E.S shall not accept, and The Client shall indemnify H.E.S against, any liability for loss, expense, damages, or injury of any kind which arises as a consequence, in whole or in part, of any inadequate, misleading or insufficient information provided to it by The Client.
- 4.7. The Client shall accept responsibility for the disconnection and/or isolation of live services within the work areas.

5. General

- 5.1. Any instruction or order placed with H.E.S by The Client shall demonstrate their acceptance of these Terms and Conditions.
- 5.2. Where The Client is a limited company the signature or written instruction of any person purporting to sign with the authority of The Client shall be binding and The Client shall be liable to comply with the Contract including these Terms and Conditions.
- 5.3. Any delays in, or failure of H.E.S to enforce any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 5.4. Any waiver granted by H.E.S to The Client for any breach of, and/or default under of any provision of the Contract shall not be deemed a waiver of any subsequent breach and/or default and shall not affect the other Terms of the Contract in any way.
- 5.5. Unless stated otherwise within the H.E.S Quote all works undertaken by H.E.S shall be carried out within normal working hours, defined as Monday to Friday from 8:00 to 16:00.
- 5.6. H.E.S may, from time to time and without notice, change these Terms and Conditions in order to comply with any statutory requirements or to reflect changes in its policy,

6. Pricing

- 6.1. All prices submitted to The Client by H.E.S are:
- 6.1.1. Subject to V.A.T at the current rate.
- 6.1.2. Not inclusive of scaffolding, water or power unless otherwise stated.
- 6.1.3. Not inclusive of reinstatement and making good unless otherwise stated.
- 6.1.4. Not inclusive of any parking, toll or dispensation charges unless otherwise stated.
- 6.1.5. Exempt from any retention, take-off or discount unless confirmed in accordance with clause 4.4.
- 6.2. Prices remain fixed for a period of two months from the date of the Quote. After this period has lapsed H.E.S shall be entitled to make any reasonable variations to the price in order to account for any increase in the cost of any of the components of the original price.

6.3. Quotes provided by H.E.S are provided on the basis that full access shall be given by The Client to carry out the works within normal working hours as defined in clause 5.5. If such access is not available H.E.S shall be entitled to make additional charges in accordance with these Terms and Conditions for any loss, expense or damages incurred due to access being unavailable.

7. The Works

7.1. H.E.S shall carry out the works using reasonable skill and care in accordance with the Contract.

7.2. The Client shall make the site available, and provided unrestricted access to H.E.S from the commencement date through to completion of the works.

7.3. H.E.S shall carry out and complete the works within the Contract period outlined within the Order Acknowledgement, subject to any extension or adjustment agreed by H.E.S and issued by The Client, with the exception of minor defects or works of a minor nature.

7.4. The Client shall provide all resources necessary for H.E.S to perform its duty in fulfilling the Contract.

7.5. H.E.S shall be entitled to a time extension in response to, and The Client shall indemnify H.E.S against, any delays to the works due to circumstances beyond the control of H.E.S. This includes but is not limited to:

7.5.1. Adverse weather conditions.

7.5.2. Civil disruption, war, riots, industrial actions such as strikes or lock-outs, terrorism or the threat thereof.

7.5.3. Traffic jams, accidents, congestion, vehicular or equipment failure which could not reasonably have been anticipated.

7.5.4. Computer or telecommunications failure.

7.5.5. The Clients instruction, or obstruction of the work by means including but not limited to:

7.5.5.1. The scheduling of other works by The Client or third party, local authority or statutory body.

7.5.5.2. Failure of The Client to make the site available or to provide the prerequisites described in clause 12 and its sub-clauses.

7.5.6. Delays in obtaining the required statutory approvals.

7.5.7. The inability of H.E.S to arrange the required labour or materials.

7.5.8. Suspension of the work by The Client, local authority or statutory undertaker.

7.5.9. Suspension of the work by H.E.S in accordance with these Terms and Conditions.

7.6. The Client shall ensure that it and its subcontractors and any other representatives comply with the H.E.S Health and Safety Policy.

8. Damages and Defects

8.1. H.E.S will exercise reasonable skill and care to ensure that damage is not caused to The Clients property, but shall accept no liability

for any damage however arising unless it is clearly and incontrovertibly demonstrated that such damage was the direct result of the negligence of H.E.S.

8.2. The Client acknowledges the right of H.E.S to correct any agreed defect, damage or insufficiency and to address any reasonable complaint made by The Client.

8.3. If The Client prevents H.E.S from taking appropriate remedial action The Client will become solely responsible for any subsequent remedial actions, regardless of whether or not these were agreed with H.E.S prior to this prevention.

9. Loss and Expenses

9.1. H.E.S shall be entitled to reimbursement by The Client for any direct or indirect loss and/or expense it incurs as a result of any disruption of the works for reasons beyond its control. These will include without limitation:

9.1.1. Clause 7.5. and its sub-clauses.

9.1.2. Suspension of the works by H.E.S pursuant to clause 8, including remobilization fees.

9.2. The provision of this clause is without prejudice to any other rights or remedies which H.E.S may possess in relation to the recovery of any direct or indirect loss and/or expense incurred by H.E.S.

10. Payments and Overdue Accounts

10.1. Where credit is granted by H.E.S to The Client, and unless otherwise agreed in accordance with clause 4.4, all payments are due within 28 calendar days of the invoice or payment application date.

10.2. H.E.S reserves the right at its absolute discretion to refuse to grant credit.

10.3. Failure to pay by the due date shall entitle H.E.S to suspend delivery of all pending or future orders.

10.4. H.E.S reserves the right at its absolute discretion to demand immediate payment of any account at any time whether due or not and to take legal action to recover the debt and costs.

10.5. H.E.S reserves the right to request interim payment during all works exceeding £10,000 in value (inclusive of V.A.T) and/or two weeks in duration, for material and labour costs incurred.

10.6. The Client agrees to make such payments in regards to clause 10.5 within 14 calendar days of application by H.E.S. If such payment is not made by The Client H.E.S reserves the right to suspend or abandon the works and remove all provided materials, labour and equipment from site.

10.7. H.E.S reserves the right to charge The Client interest on overdue accounts.

10.8. Interest on overdue accounts is charged at a rate equal to 5% of the total Contract value which shall compound daily until payment is made.

10.9. H.E.S reserves its statutory right under the Late Payment of Commercial Debts and Interest Act (1998) to claim interest and compensation for debt recovery fees incurred by H.E.S if The Client fails to keep payments in accordance with H.E.S credit terms.

- 10.10. H.E.S may at any time without prejudice to any other rights and remedies available to it, set off any amount owed to it by The Client against any amount payable by H.E.S to The Client.
- 10.11. Where The Client is not an approved H.E.S account customer in good standing, H.E.S reserves the right to require payment, in part or in full, in advance of the commencement of any works on behalf of The Client.
- 11. Contract Termination**
- 11.1. The Contract may not be cancelled by The Client without the written consent of H.E.S. H.E.S reserves the right upon consent being given to levy a cancellation charge of a minimum of 10% of the Contract value to cover any losses H.E.S may incur due to the cancellation.
- 11.2. H.E.S shall be entitled, without prejudice to any other rights or remedies, and without liability to The Client, to cancel any works in the event of circumstances as described (but not limited to) those contained in clause 7.5. and its sub-clauses.
- 11.3. H.E.S reserves the right, without prejudice to any other rights or remedies, and without liability to The Client, to terminate any Contractual agreement with The Client if The Client fails to make applicable payments as outlined in clause 10.11.
- 11.4. H.E.S reserves the right, without prejudice to any other rights or remedies, and without liability to The Client, to terminate any Contractual agreement with The Client if The Client:
- 11.4.1. Makes any voluntary arrangement with its creditors, proposes to enter into, or enters into administration, is unable to pay its debts as they become due, applies to a Court to suspend enforcement action against it, is dissolved, becomes insolvent, goes into liquidation, enters into a trust deed or voluntary arrangement for the benefit of its creditors, or if the equivalent occurs under any jurisdiction.
- 11.4.2. Is subjected to the appointment of an administrator or receiver over (or if a collection agency takes possession of), any of The Clients property or assets.
- 11.4.3. Fails to make payment or threatens to cease or ceases to carry on business.
- 11.4.4. H.E.S reasonably considers that any of the above is likely to occur and informs The Client of such.
- 11.5. In the event of a cancellation in accordance with this clause any outstanding gross amount due to H.E.S by The Client shall become immediately payable in accordance with these Terms and Conditions regardless of any prior agreement to the contrary.
- 12. Service Specific Terms and Conditions**
- 12.1. Asbestos Removal and Related Services**
- 12.1.1. All licensed asbestos removal shall be carried out to within the clearance indicator as set by the Control of Asbestos Regulations (2012).
- 12.1.2. The Client will supply H.E.S with:
- 12.1.2.1. A safe, suitable and sufficient 240 and/or 110 volt electric supply.
- 12.1.2.2. A safe, suitable and sufficient pressurised water supply.
- 12.1.2.3. Sole access to the work area and specified transit routes for the duration of the works.
- 12.1.2.4. A work area and transit route that are completely clear of all debris, loose items or furnishings which are not to be removed and disposed of as contaminated waste as an agreed element of the Quote for that work provided to The Client by H.E.S.
- 12.1.2.5. Parking for a minimum of one decontamination unit and van, and/or skip as required. This shall be as close to the work area as is reasonably practicable.
- 12.1.2.6. Welfare facilities including toilets, washing facilities and eating areas. If H.E.S are required to supply a welfare unit an additional cost for the hire and mobilization of such will be levied to The Client by H.E.S.
- 12.1.3. Any delays or interruptions to the works pursuant to this clause, or which are not directly caused by circumstances within the control of H.E.S shall result in day rate charges being levied to The Client at the standard rates of H.E.S.
- 12.1.4. All prices are subject to approval of the Method Statement by the relevant authorities.
- 12.1.5. Works may be subject to a 14 day notification period to the Health and Safety Executive or relevant authority.
- 12.1.6. Any cancellation or rescheduling of the work subsequent to H.E.S submitting an ASB5 which is not the directly caused by circumstances within the control of H.E.S (as described in clause 7.5), will lead to an administrative charge of £250 plus V.A.T being levied to The Client by H.E.S. This shall be in addition to any charges incurred under clause 12.1.3.
- 12.1.7. H,E,S may need to register the site containing the work area with the Environment Agency, in order to obtain a hazardous waste premises code. If required this will be obtained at an additional cost of £25 plus V.A.T, which will be levied to The Client by H.E.S, unless this is specifically allowed for within the Quote.
- 12.1.8. It is imperative for work of this nature that the work area is adequately enclosed during the works. As such H.E.S will not accept, and The Client shall indemnify H.E.S against, any liability for any loss, expense or damages which result from any adhesive or expanding foam residues remaining on site which are a by-product of the construction of an enclosure or sealing of a work area.
- 12.1.9. Due care and diligence will be employed by H.E.S during the course of the works. However H.E.S will not accept, and The Client shall indemnify H.E.S against, any liability for damage caused to The Clients decorations.
- 12.1.10. Any items removed by H.E.S as part of the works will not be reinstated unless specifically allowed for within the Quote.
- 12.1.11. H.E.S will provide suitable warning signs and barrier tape as required for the works, but no provision has been made to segregate the work area with HERAS fencing, hoarding or similar unless specifically stated within the Quote.
- 12.2. Asbestos Surveying and Sampling**

- 12.2.1. The Client shall provide opportunity for H.E.S to undertake a site walkthrough with The Client prior to providing a Quote, in order that the full requirements of The Client are clearly and unambiguously identified, including the presence of any difficult to access areas. If The Client does not meet the criteria of this clause, or if the requirements identified prior to the Quote are expanded or altered, The Client will accept liability to H.E.S for any additional reasonable fees associated but not limited to extended labour, administrative, material, access, sampling and mobilization costs.
- 12.2.2. In the case of pre-refurbishment and/or demolition surveys it may be necessary to access behind asbestos containing materials. In most cases this work will require a licensed asbestos contractor. Where the presence of such materials is not made clear to H.E.S and specifically allowed for within the Quote The Client will accept liability to H.E.S for any additional reasonable costs incurred in arranging controlled access. Such circumstances may also require a 14 day notification period as outlined in clause 12.1.5. In this event The Client will indemnify H.E.S against any liability for loss, expense or damages which arise from any subsequent delays to completion of the survey, or to any other associated or subsequent works.
- 12.2.3. Survey report(s) are prepared with all reasonable skill, care and diligence within the terms of the Contract with The Client and within the limitations of the resources devoted to it by agreement with The Client. H.E.S will not accept, and The Client will indemnify H.E.S against, any liability for loss, expense, damages, or injury of any kind, which arises from any deficiencies contained within the report(s) that are the result in whole or in part of any limitations placed upon H.E.S by The Client, or by any circumstances beyond the direct control of H.E.S in performing this service including its inability to access areas during the survey.
- 12.2.4. Any areas not accessed during the survey shall be presumed to contain asbestos. The Client shall arrange access for H.E.S to any such areas unless it was specifically agreed within the Quote that H.E.S would provide access. Where The Client fails to provide such access it accepts and indemnifies H.E.S against, all risk and liability for any asbestos containing materials which are subsequently uncovered in any identified inaccessible or non-accessed areas.
- 12.2.5. Pursuant to clause 4.6 The Client shall provide all relevant and available information concerning the site or area to be surveyed. H.E.S shall not accept, and The Client shall indemnify H.E.S against any liability for loss, expense, damages, or injury of any kind, which arises from any deficiency contained within the report(s) which are a result, in whole or in part, of any inadequate, misleading or insufficient information provided to it by The Client.
- 12.2.6. The Client accepts that all surveying or sampling prices provided by H.E.S are exclusive of any revisits, or provisions for any additional tradesmen which may be required unless specifically stated otherwise.
- 12.2.7. The Client accepts that prices for intrusive surveying works include a provision for the use of hand tools only to open up the survey areas unless otherwise stated.
- 12.2.8. Every effort shall be made to identify all asbestos materials so far as it is reasonably practical to do so within the scope of the survey. However sampling will not be undertaken in areas in which the act of sampling will endanger the safety of the surveyor or damage the critical integrity of the product or structure. Any suspected materials which H.E.S is unable to sample for these reasons shall be presumed to contain asbestos by The Client until proven otherwise.
- 12.2.9. The survey report(s) will distinguish between asbestos cement and asbestos insulating board based upon their subjective appearance and asbestos content alone. Water absorption testing as detailed in the H.S.E publication L143 'Work with materials containing asbestos' will not be carried out unless requested by The Client and specifically included within the Quote. Any absorption testing which is requested by The Client, but is not specifically included within the Quote, shall be levied to The Client as an additional charge to the original price contained within the Quote.
- 12.2.10. All material extents contained with the report(s) are approximations based upon the judgement of the surveyor during the survey and shall not be used as the basis of a tender specification for remedial works. A survey report does not constitute a Bill of Quantities and shall not be relied upon as a specification for remedial works.
- 12.2.11. The condition of the site, and of any asbestos containing materials referred to in the survey report(s) are as found at the date of the inspection as noted within the report(s). The Client accepts that any future changes to the condition of the site, or to asbestos containing materials therein may invalidate the information contained within the report(s).
- 12.2.12. No responsibility can be accepted by H.E.S for portable appliances, or items, containing or composed of asbestos which are not specifically identified within the report(s).
- 12.2.13. H.E.S will not accept, and The Client shall indemnify H.E.S against, liability for any damage caused as part of a survey carried out on its behalf. Due to the nature and necessity of sampling for asbestos some damage is unavoidable and will be limited to that necessary for the taking of the samples or in the case of intrusive surveys to inspect behind, above, below or within voids, surface materials, services or similar within the limitations set by these Terms and Conditions.
- 12.2.14. If The Client is not an approved H.E.S account customer payment shall be required in full prior to issuance of the reports(s).
- 12.2.15. **Confidentiality of Reports**
- 12.2.15.1. All report(s) shall be produced solely for the benefit of The Client, and are subject to and protected by copyright. H.E.S shall not be held liable to any third party who places any reliance on the information contained within its report(s), regardless of whether The Client has given permission to do so. The Client shall indemnify H.E.S against all liability for loss, expense or damages incurred by H.E.S due to claims made by third parties that arise from any distribution or reproduction of the report(s) in whole or in part by The Client.

12.2.15.2. No report(s) may be used by any third party without the expressed written consent of the Authorised Representative of H.E.S. H.E.S will not accept any liability for loss, expense, damages, or injury of any kind which results from such use regardless of whether or not consent is given.

12.2.15.3. H.E.S reserves the right at its absolute discretion to refuse to grant consent to any third party which requests to make use of a H.E.S survey report(s), regardless of the third parties relationship to The Client.

12.2.15.4. H.E.S maintains all intellectual property rights (without prejudice to other rights) relating to the survey report(s). The Client accepts that survey report(s) are/will be owned by H.E.S.

12.2.15.5. Upon issuance of a final report(s) H.E.S shall grant the Client a non-exclusive, non-transferrable licence to use the information contained therein strictly for The Clients own purposes.

12.3. Demolition and Related Services

12.3.1. The Client shall ensure that all relevant statutory approvals which are related to the work are obtained and shall accept liability for, and indemnify H.E.S against, all fees and/or subsequent charges which may result of their failure to do so.

12.3.2. Any delays or interruptions to the works which are not directly caused by circumstances within the control of H.E.S shall result in day rate charges being levied to The Client at the standard rates of H.E.S. The Client shall indemnify H.E.S against any liability for loss, expense or damages which result from such circumstances.

12.3.3. All Demolition prices are made on the basis that, unless specifically stated otherwise within the Quote:

12.3.3.1. Foundation removal is not included.

12.3.3.2. Disconnections of services are not included or are to be carried out by others.

12.3.3.3. Welfare facilities, power and water supplies are not included or are to be provided by others.

12.3.3.4. Access equipment is not included or is to be provided by others.

12.3.3.5. Hazardous waste removal including asbestos is not included or is to be carried out by others.

12.3.3.6. Fencing, hoarding, protection or segregation of the work area, propping and weather or waterproofing are not included or are to be provided / carried out by others.

12.3.3.7. Oxypropane or acetylene burning, or diamond cutting or drilling is not included or is to be carried out by others.

12.3.4. If foundations are specified within the Quote but the depth is not specified the price will include for an average depth of 500mm.

12.3.5. No prices submitted to The Client shall be considered 'All Risk' unless specifically stated and confirmed by an Authorised Representative in accordance with clause 4.4.

13. Confidentiality

13.1. H.E.S maintains all intellectual property rights (without prejudice to other rights) relating to any documentation produced by H.E.S in procuring or fulfilling its Contract with The Client. The Client accepts that such documents are/will be owned by H.E.S.

13.2. Issuance of any such documentation to The Client shall signify that H.E.S has granted the Client a non-exclusive, non-transferrable licence to use the information contained therein strictly for The Clients own purposes.

13.3. Both parties shall use all reasonable diligence and care to maintain confidentiality of all information received which relate to any part of the business or affairs of the other party except where this information:

13.3.1. Is made publicly known through no wrongful act of the party concerned.

13.3.2. Is required to be disclosed by order of a statutory authority with jurisdiction.

13.3.3. Is disclosed to any adviser of either party which is bound by a professional duty of confidentiality.

14. Warranties

14.1. The Company warrants to The Client that it will use reasonable skill, care and diligence whilst undertaking the service.

14.2. The Client warrants to H.E.S that all information provided by The Client pursuant to the terms of the Contract is true, accurate and not misleading.

15. Headings

15.1. The headings contained herein do not form part of these conditions and shall not govern the interpretations thereof.

16. Limitation of Liability

16.1. In addition and without prejudice to the rights and remedies set out in these Terms and Conditions, H.E.S limits its liability to the maximum extent permitted by all applicable laws and regulations.

17. Severance

17.1. If one or more of the provisions of the clauses contained herein becomes invalid, illegal or unenforceable in any respect under English law the validity and enforceability of the remaining provisions shall not be impaired in any way.

18. Jurisdiction

18.1. These Terms and Conditions and any Contract between H.E.S and The Client will be subject to and constructed in accordance with English Law and English Courts shall have sole jurisdiction.