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SPECIALISTS IN SURVEY & SAFETY EQUIPMENT

Terms and Conditions of Trade

A GENERAL

1 Definitions and interpretation

"**Contract**" means the contract for the Work formed by Zenith's acceptance (which, however made or communicated, shall be deemed made subject to these Conditions) of the Customer's Order;

"**Contract Year**" means a period of 12 consecutive months, starting on the date of the Order or any anniversary of the Order;

"**Customer**" means the person or firm placing an Order with Zenith;

"**Equipment**" means any equipment agreed to be sold and/or hired out to the Customer by Zenith (including any part or parts of them);

"**Hire Period**" means the period of time for which Zenith agrees to hire out the Equipment to the Customer, as detailed in the Order;

"**Intellectual Property**" means all intellectual property rights including, without limitation, patents, registered designs and any rights to apply for the same, copyright, design rights, database rights, rights in and to confidential information and know-how and any rights analogous to the same subsisting anywhere in the world at any time;

"**Order**" means the order placed by the Customer for the supply of the Work;



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"**Quotation**" means the rates quoted to the Customer by Zenith whether in writing or orally, prior to the Customer's Order;

"**Service**" means the service of repairing and/or maintaining safety and/or surveying equipment and/or training provided by Zenith to the Customer in accordance with the Order;

"**Service Period**" means the period for which Zenith agrees to provide the Services as detailed in the Order;

"**Site**" means the site where the Work is to be provided;

"**Work**" means the

- a. sale of the Equipment; and/or
- b. hiring out of the Equipment; and/or
- c. provision of Services;

to the Customer by Zenith;

"**Zenith**" means Zenith Survey Equipment Limited.

2 Supply of the Work

2.1 The Contract shall be deemed to have been entered into upon receipt of Zenith's written order acknowledgement or when Zenith commences the Work. All Work carried out is done subject to these Conditions and these Conditions shall be the sole terms and conditions applicable. Terms and Conditions on the Customer's order form or other similar document shall not be binding on Zenith and the placing of the Order by the Customer shall indicate unqualified acceptance of these Conditions.

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2.2 No representative, agent or other person has Zenith's authority to vary, amend or waive any of these Conditions of Supply on behalf of Zenith and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless accepted in writing by one of Zenith's directors.

3 Rates and payment

3.1 Rates for the Work are the rates as detailed in the Quotation. For the avoidance of doubt, such rates shall not include delivery, packing, customs duties, import levies, VAT or other similar duties, levies or taxes, all of which the Customer shall be responsible for paying.

3.2 Rates for the Work may be increased on an annual basis at Zenith's discretion. However, if Zenith increases the rates for the Work the Customer will be entitled to terminate by giving one month's notice.

3.3 Where applicable, Zenith reserves the right to submit weekly invoices.

3.4 Payment by the Customer to Zenith shall be made within 30 (thirty) days of the date of Zenith's invoice. Time for payment shall be of the essence under the Contract.

3.5 In the event that any amount payable to Zenith under the Contract becomes overdue in accordance with condition 3.4 above:

- (a) interest shall be chargeable on any amounts overdue at the rate of 4% per annum above the base rate of the Lloyds Plc as applying from time to time to run from the due date for payment until receipt by Zenith of the full amount whether or not after judgment and without prejudice to any other right or remedy of Zenith; and
- (b) the full price of any payments payable to Zenith under any other contract between Zenith and the Customer shall immediately fall due and be owing; and
- (c) Zenith shall be entitled:



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- (i) to suspend all or any deliveries to be made under the Contract or under any other contract with the Customer. In such event the Customer shall not in any respect be released from its obligations to Zenith under the Contract or under any other contract; and/or
- (ii) terminate the Contract and/or any other contract with the Customer in accordance with condition 18.

3.6 No payment shall be deemed to have been received until Zenith has received cleared funds.

3.7 All payments payable to Zenith under the Contract shall become due immediately on its termination despite any other provision.

3.8 In the event that Zenith, at its option and in its sole discretion, suspends or waives a payment or part of a payment, whether permanently or for a fixed period, due under the Contract (for example over the Christmas period), this shall not be deemed to be a waiver of Zenith's right to payment or any other right, nor operate to bar the exercise or enforcement of it or any other right at any time or times thereafter and the Customer will still be obliged to comply with all its obligations under the Contract.

3.9 The Customer shall make all payments due under the Contract in full without any deduction whether by set-off, counterclaim, discount, abatement or otherwise.

4 Duration of the Quotation

4.1 The Quotation will be valid for 28 days.

4.2 Upon the expiration of a Quotation it will be the Customer's responsibility to obtain a new Quotation from Zenith or written confirmation from Zenith as to the continued validity of an existing Quotation.



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5 Intellectual Property Rights

5.1 The Customer acknowledges that all Intellectual Property belonging to Zenith in the Equipment and used in the Work shall remain entirely in the ownership of Zenith. Nothing said or done by either party shall constitute the transfer of any such rights.

6 Description and Quality

6.1 The quantity of the Work supplied shall be as set out in the Quotation.

6.2 Zenith warrants that the description and specification of the Equipment hired or sold to the Customer shall be at the time of delivery as specified in the Equipment manufacturer's specification including meeting the manufacturer's tolerances which is set out in full on Zenith's website or the relevant manufacturer's website from time to time. Zenith does not warrant or give any guarantees that the Equipment or any element of the Work will be fit for purpose and it shall be for the Customer to determine that the Equipment and/or Service is fit for the Customer's purpose prior to placing an Order.

6.3 The quantity and quality of any consignment of Equipment as recorded by Zenith upon despatch from Zenith's place of business shall be conclusive evidence of the quantity and quality received by the Customer on delivery unless the Customer can provide evidence proving the contrary.

6.4 In the event that the Customer alleges that the Equipment delivered does not comply with the warranty above and/or quantity as agreed under the Contract and in accordance with the Order, the Customer:

- (a) undertakes to notify Zenith in writing of any alleged defects in or insufficient quantity of the Equipment as soon as it becomes aware of such and in any event, within 2 (two) weeks from the date of delivery; and



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(b) shall give Zenith or its representative(s) a reasonable opportunity to inspect the Equipment concerned in the state, condition and location in which it was delivered.

6.5 In the event that the Equipment does not comply with the warranty given in the above condition 6.2 Zenith shall at its option:

(a) repair or replace such Equipment (or the defective part); or

(b) refund the price of such Equipment if purchased or, if hired, terminate the Contract and refund any monies paid when the Equipment could not be used provided that, if Zenith so requests, the Customer shall, at Zenith's expense, return the Equipment or the part of such Equipment which is defective to Zenith.

6.6 Zenith warrants that it shall deliver the Service with reasonable skill and care.

7 Delivery

7.1 Unless otherwise agreed in writing by Zenith, delivery of the Work shall take place at the address stated on the Order.

7.2 Any dates specified by Zenith for delivery of the Work are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7.3 Zenith accepts no liability whatsoever for any loss or damage resulting, whether directly or indirectly, from any delay in delivery of the Work.

7.4 If for any reason the Customer fails to accept delivery of any of the Equipment when it is ready for delivery, or Zenith is unable to deliver the Equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Equipment shall pass to the Customer at the point when Zenith was ready to deliver (including for loss or damage caused by Zenith's negligence);



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- (b) the Equipment shall be deemed to have been delivered; and
- (c) Zenith may store the Equipment until actual delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7.5 Where the Customer is purchasing or hiring the Equipment:

- (a) Zenith may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract; and
- (b) each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

8 Risk / Title

8.1 Risk in the Equipment shall pass to the Customer upon receipt of a signature received at the time of and place for delivery. For the avoidance of doubt, it shall be the Customer's responsibility to ensure that any person who signs at the point of delivery is an authorised signatory of the Customer.

8.2 Where Zenith sells the Equipment to the Customer (which, for the avoidance of doubt, does not include supplying the Equipment to the Customer on a hire basis) ownership in the Equipment shall not pass until Zenith has received payment of all sums due to it in respect of:

- (a) the Equipment; and
- (b) all other sums which are or which become due to Zenith from the Customer on any account for any aspect of any Work.

8.3 Subject to condition 8.2 above, ownership of the Equipment shall at no point pass to the Customer.



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- 8.4 Where ownership in the Equipment has not passed to the Customer, the Customer undertakes:
- (a) where it is purchasing the Equipment, to hold the Equipment as Zenith's bailee until ownership in the Equipment passes in accordance with condition 8.2 above;
 - (b) to store the Equipment (at no cost to Zenith) separately from all other equipment of the Customer or any third party in such a way that they remain readily identifiable as Zenith's property;
 - (c) not to destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - (d) to grant Zenith, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them; and
 - (e) that all proceeds of any sale shall be held in a designated account (of which the Customer shall provide Zenith with details) until ownership has passed to the Customer in accordance with clause 8.2.

9 Returns

- 9.1 Where Zenith provides the Equipment to the Customer on a hire basis, on the last day of the Hire Period or upon termination of the Contract howsoever caused, whichever occurs first, the Customer shall at its own cost return all and any Equipment to Zenith at the address as stated on the Quotation or as otherwise directed in writing by Zenith.
- 9.2 Return of the Equipment shall be accepted by and risk in the Equipment shall pass to Zenith only upon receipt of a signature received at the time of and place for return delivery to be agreed between the parties in advance of any return.



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- 9.3 Once the Equipment has been returned in accordance with conditions 9.1 and 9.2 above, Zenith shall have 14 days to check such Equipment and in the event that Zenith is not satisfied with the condition in which the Equipment is returned, shall notify the Customer detailing why it is not satisfied with the Equipment's condition.
- 9.4 In the event that any Equipment returned is damaged, Zenith will send a rough estimate of the cost initially and later on a full invoice detailing the cost. Such invoice will be paid by the Customer within 30 days of the date of such invoice.
- 9.5 In the event that any part of the Equipment hired is returned Zenith will notify the Customer stating what is missing. In the event that such missing equipment is not returned within 14 days of such notification the Customer will be invoiced for the missing equipment. In the event that Zenith cannot replace the missing parts it will invoice the Customer for all the Equipment. Such invoice will be paid by the Customer within 30 days of the date of invoice.
- 9.6 The Customer will ensure that it returns exactly the Equipment hired. All Equipment has specific numbers to identify it.

10 Insurance

- 10.1 Where ownership in the Equipment has not passed to the Customer but delivery has occurred in accordance with condition 7, the Customer undertakes to maintain the Equipment in good condition and keep it insured on Zenith's behalf for the full replacement value as stated on the Quotation against all risks, including but not limited to fire, theft, loss and damage, to the reasonable satisfaction of Zenith. The Customer will ensure that the insurers note Zenith's interest on the relevant insurance policy and on request, the Customer shall produce the policy of insurance to Zenith.
- 10.2 In the event that the Equipment is damaged in any way (except for fair wear and tear), lost or stolen the Customer shall pay Zenith the full cost of repair and/or replacement of the Equipment as appropriate, regardless of whether the Customer receives payment from it's

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insurers. In the event that the Equipment has become obsolete the Customer will pay to replace it with an equivalent new piece of Equipment

11 Permission

11.1 The Customer undertakes and warrants that it has obtained at its own cost all the necessary certificates, licences, permits, wayleaves and consents required by Statute or any order or regulation made thereunder or by any regulation or by-law of any local authority needed in relation to the Equipment and/or Work prior to placing the Order.

12 Contract Documents and Specification

12.1 The Service shall be carried out in accordance with the Order and standard industry practice.

12.2 Zenith will only be deemed to be aware of any documents sent to Zenith if such documents are provided in paper copy to Zenith a minimum of 7 (seven) days prior to the Order being approved by Zenith and only if a member of Zenith's management team (i.e. a Branch Manager or above) confirms in writing that they have taken such documents into account. Failure to do so will result in Zenith not being responsible for any default, error or omission which may have the consequence of causing or contributing to any breach on the part of the Customer of any of their responsibilities.

13 Change Control Procedure

13.1 In the event that the Customer wishes to make any changes to any aspect of an Order or the Contract, including but not limited to the volume, description or ownership status of the Equipment, it must notify Zenith of such changes in writing ("**Change Request**").

13.2 On receipt of a Change Request Zenith shall, within 21 days, notify the Customer as to whether it accepts the Change Request. For the avoidance of doubt, Zenith is under no obligation to accept any Change Request.

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13.3 In the event that Zenith does accept the Change Request, Zenith shall notify the Customer of any increase or decrease of the cost and the relevant changes that need to be made to the Contract, including but not limited to any additional terms and/or conditions which shall thereforth apply. Zenith is under no obligation to accept any changes.

14 Commencement date and timescale

14.1 The commencement date of the Work shall be agreed in advance, but will be subject to the availability to Zenith of labour and materials. Where the commencement date is of high importance, the Customer must inform Zenith.

14.2 Although Zenith shall use all reasonable endeavours to comply with the quoted timescale for the Work, the timescale is not binding and delays beyond the control of Zenith shall be charged for at the rates agreed between the parties and there shall be an appropriate extension to such timescales.

14.3 Where the Customer requires Zenith to carry out the Work to a different timescale to that agreed, Zenith reserves the right to amend the rates chargeable accordingly.

14.4 Zenith shall not be liable for any loss or damage whatsoever or howsoever caused by any delay in the completion of the Work resulting from events beyond Zenith's control.

15 Damage and reinstatement of the Site

15.1 Zenith shall not be responsible for any damage caused to the Site unavoidably or necessary by the provision of any element of the Work.

16 Liability

16.1 This condition 16 sets out the entire financial liability of Zenith (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of the Contract; any use made by the Customer of the Work; any use made or resale by the Customer of any Equipment, or of any product



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incorporating any of the Equipment; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

16.2 Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

16.3 Nothing in these Conditions limits or excludes the liability of Zenith for death or personal injury resulting from negligence; or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Zenith; or for any liability incurred by the Customer as a result of any breach by Zenith of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

16.4 Subject to condition 16.3

- (a) Zenith shall not be liable for loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of Equipment; or loss of contract; or loss of use; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
- (b) Zenith's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be limited:
 - (i) where the Equipment is sold to the Customer, to the price paid or payable for the Equipment; or
 - (ii) where the Equipment is hired, to the price paid or payable for the Equipment for the Hire Period or where the Hire Period is over a year, to the price paid or payable for the hire of the Equipment in the Contract Year in which such default occurred;



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(iii) where the Service is provided, to the price paid or payable for the Services during the Service Period or if the Services are provided for more than one year the price paid in the Contract Year in which the default occurs.

16.5 The Customer shall fully indemnify and keep indemnified Zenith in respect of all damage or injury occurring to any person or to any property and against any and all damages, losses, actions, suits, claims, demands, costs, charges and expenses arising or reasonably foreseeable to arise in connection therewith which shall be occasioned by the act omission negligence and/or breach of the contract (including anticipatory breach) or breach of statutory duty by the Customer and/or any of its employees, sub-contractors, servants and agents.

17 Confidentiality

17.1 The Customer shall at all times keep secret and confidential all technical or commercial know-how, specifications, inventions, processes, initiatives, business and trade secrets, methods of doing business, customer lists and all other information of a confidential nature which have been disclosed to the Customer or the Customers agent by Zenith, its employees, agents or sub-contractors and any other confidential information concerning Zenith's business or its products or services which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Zenith, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

17.2 The above 17.1 shall not apply to confidential information which:

- (a) is in the public domain or is already lawfully known to the Customer at the time of disclosure; or
- (b) subsequently comes lawfully into the possession of the Customer from a third party; or



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- (c) subsequently enters the public domain otherwise than as a result of unauthorised disclosure by Zenith or any other person.

17.3 This condition 17 shall survive termination of the Contract, however arising.

18 Termination

18.1 Zenith may terminate the Contract, or any part of the Contract, by giving 30 days written notice to the other.

18.2 Either party may (without prejudice to any other rights it may have under the Contract) forthwith terminate the Contract by written notice to the other if the other:

- (a) commits a material breach of any provision of the Contract which is not capable of remedy;
- (b) commits a material breach of any provision of the Contract and fails to remedy such breach (where capable of remedy) within 30 days of receipt of a notice from the innocent party specifying the breach; or
- (c) becomes bankrupt insolvent compounds with its creditors or shall have distress or execution levied upon its property or is wound up or goes into liquidation (except for the purposes of a bona fide reconstruction) or shall have a receiver administrative receiver or administrator appointed of the whole or any part of its assets or shall suffer the appointment of any similar person under the laws of its domicile.

18.3 In the event of a termination in accordance with condition 18.2 above Zenith shall be entitled to repossess any Equipment which is owned by Zenith but which is in the possession or control of the Customer and for such purpose to enter the premises where the Equipment is located or any premises where Zenith has reason to believe the Equipment is located and the Customer shall cease to be entitled to sell any of the Equipment supplied by Zenith where it was



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previously so entitled and the rights contained in this condition shall be without prejudice to any of Zenith's other rights under the Contract.

18.4 The exercise of the rights granted under this condition 18 shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to either Party.

19 General provisions

19.1 All payments to be made under the terms of the Contract are exclusive of any VAT (or any tax of a similar nature) which shall be payable on the production of a valid VAT invoice therefore in addition to any such payments.

19.2 Each provision of the Contract is severable and distinct from the others and if any provision is or at any time becomes to any extent or in any circumstances invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of the Contract, but the validity, legality and enforceability of all other provisions of the Contract shall not otherwise be affected or impaired, it being the parties' intention that every provision of the Contract shall be and remain valid and enforceable to the fullest extent permitted by law.


19.3 Zenith shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing any of its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Zenith or any other party), failure of a utility service or transport network, act of God, act of terrorism, 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 Zeniths or sub-contractors.



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- 19.4 Failure or delay of a party to exercise or enforce any right under the Contract shall not be deemed a waiver of that right or any other right, nor operate to bar the exercise or enforcement of it or any other right at any time or times thereafter.
- 19.5 No variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is executed by a duly authorised representative of each party.
- 19.6 Each party warrants to the other that, in entering into the Contract, it does not rely on any statement, representation, assurance, promise or warranty of any person (whether a party to this agreement or not) other than as expressly set out in this Agreement. Neither party excludes its liability for fraudulent misrepresentation.
- 19.7 The Customer shall not assign, transfer or sub-contract the Contract or any of its rights, benefits or obligations under it to any other person, firm or body corporate with gaining prior written consent from Zenith. For the avoidance of doubt, Zenith shall be entitled to assign, transfer or sub-contract the Contract or any of its rights, benefits or obligations under it to any other person, firm or body corporate at any time.
- 19.8 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract.
- 19.9 The Contract shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract.

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