

SOIL ENVIRONMENT SERVICES LIMITED (SES Ltd) STANDARD TERMS AND CONDITIONS

1. DEFINITIONS and PROVISION OF SERVICES

- 1.1. SES LTD ” means company that has accepted the Client’s request to provide the Services.
- 1.2. “Client” means any person, partnership or company whose request for the provision of services is accepted by SES LTD .
- 1.3. These conditions shall apply to all services provided by SES LTD to the Client (“Services”) unless otherwise agreed in writing. These conditions shall take effect to the exclusion of any other terms and conditions of the Client or otherwise. No prior correspondence, addition to, variation or waiver of these conditions shall be binding unless agreed in writing by SES LTD . The headings in these conditions shall not effect their construction or interpretation.
- 1.4. SES LTD shall provide the Services according to the Consultancy Services Agreement for the fee agreed in writing.

2. THE CLIENT’S OBLIGATIONS

- 2.1. The Client warrants that all information provided by or on behalf of the Client to SES LTD will be full and accurate. This is to include all knowledge of on-site underground services SES LTD need to be made aware of.
- 2.2. The Client will be responsible for assessing the recommendations and advice given by SES LTD and for any commercial decisions that it makes. The Client is responsible for taking into account the limitations in the instructions given to SES LTD, and commercial and other factors, of which the Client and its other advisors are, or should be aware.
- 2.3. Delivery, maintenance and insurance of materials and equipment provided by the Client shall be the responsibility of the Client. SES LTD will be responsible for its own materials and equipment.

3. PAYMENT TERMS

- 3.1. Unless otherwise agreed in writing or detailed in the *Consultancy Services Agreement*, all sums due to SES LTD are due within 30 days of invoice date. SES LTD reserves the right unilaterally to vary payment terms by giving prior written notice.
- 3.2. If any payment is not made to SES LTD by the due date: (i) SES LTD reserves the right to cease to provide the Services and, if it thinks fit, terminate the contract; (ii) the Client agrees that payment for all Services carried out by SES LTD up to that date shall become due and payable forthwith whether or not an invoice has been issued in respect of that work and notwithstanding that 30 days may not have expired since the invoice date; and (iii) SES LTD reserves the right to charge interest on any overdue payment at the statutory rate (Interest Act 1998).
- 3.3. The Client shall reimburse SES LTD for all expenses properly incurred by SES LTD in the discharge of the Services.
- 3.4. SES LTD will add VAT to its charges and expenses at the applicable rate then in force.
- 3.5. SES LTD reserves the right to take up credit, bank and other references.
- 3.6. SES LTD will not accept transfer of payment liability to a third party once the work has begun.
- 3.7. For testing services only, for individuals, non registered companies and for property transactions, payment is required before work commences.
- 3.8. For a contaminated land risk assessment, the CLIENT agrees to pay the agreed fees irrespective of the REGULATOR’S DECISION – The final decision on issues relating to risk from contamination on a site legally rests with both the local authority contaminated land officer and/or the Environment Agency who are termed the regulators. SES Ltd undertake the assessment of a site to reach a decision on risk which is both factually correct and beneficial to our clients. These benefits include the actual risk status, the clients budget and also development schedule. SES Ltd endeavour to undertake this work to the highest standards and in accordance with current guidance. Guidance information can be interpreted differently between local authority and agency officers across the UK . We therefore use our experience to reach a decision which will be accepted by the regulators in the CLIENT’S site location in addition to meeting the other criteria listed above. Cases may occasionally arise when some regulators may not agree with our decision on risk and they may express their assessment on our decision for example by stating our report is ‘not acceptable’ is ‘not up to standard’ or ‘does not take account of current guidance. SES Ltd does not accept regulator statements on the quality of our reports but may (sometimes after assessment of new information supplied by the regulator) accept their final decision on the risk. SES Ltd will address regulator queries on a report (within reason) as part of our ‘after sales’ service. Therefore the client agrees to pay for the work undertaken within the work schedule and will not withhold fees as a result of a decision made by a regulator.
- 3.9. For an Agricultural Land Classification survey, the CLIENT agrees to pay the agreed fees irrespective of the ALC Grading determined by SES Ltd.
- 3.10. For a geotechnical site investigation, the CLIENT agrees to pay the agreed fee irrespective of whether the ground strata encountered during the site investigation matches the ground strata found during subsequent excavation for foundations.

4. SES LTD ’ WARRANTIES AND LIABILITY

- 4.1. SES LTD will use reasonable skill and care in carrying out the Services. SES LTD advice is based upon the business climate and circumstances prevailing at the time the advice is given. SES LTD accepts no responsibility for any external factors which may later change or fluctuate or of which SES LTD cannot reasonably be expected to be aware.

- 4.2. The parties agree that SES LTD ' advice will only apply in the context of the instructions given by the Client to SES LTD . SES LTD will not accept liability for use by the Client in any other circumstances.
- 4.3. Any advice or recommendations given by SES LTD as part of the Services will not be binding on SES LTD unless confirmed by SES LTD in writing.
- 4.4. Any work carried out for the Client by SES LTD outside the Services and for which SES LTD does not charge the Client shall not be, or deemed to be, subject to any contract between SES LTD and the Client. SES LTD will not expect or agree to the Client relying upon such work and SES LTD excludes all liability in contract and in tort, including for negligence, for such work.
- 4.5. SES LTD will not be liable for any of the following arising from provision of the Services (including arising from SES LTD ' negligence): (i) loss of anticipated profits or expected future business; (ii) damage to reputation or goodwill; (iii) damages, costs or expenses payable by the Client to any third party; (iv) loss of any order or contract; or (v) indirect or consequential loss of any kind.
- 4.6. SES LTD will not be liable for (i) any failure or delay in carrying out the Services attributable to any act or omission, or delay by the Client, its employees or contractors; or (ii) any products supplied by a third party.
- 4.7. With respect to services provided to assist in releasing a planning permission condition, SES Ltd will not accept liability for any delays in relation to queries from local authority officers and will not be liable for any costs resulting from the assessment process running past the end of the planning permission period.

5. TERMINATION

- 5.1. Without prejudice to their other rights, a party may terminate the contract if (i) the other party commits a material irremediable breach or fails to remedy a material and remediable breach within 21 days of receipt of written notice to do so; (ii) the other party has an administrator or administrative receiver appointed over all or any of its assets or goes into insolvent liquidation; or (iii) an event within the scope of condition 7.2 prevents or delays SES LTD from carrying out the Services for 60 consecutive days or more.
- 5.2. Payment for all Services carried out up to and including the date of termination shall be due on termination by the client pursuant to condition 6.1.
- 5.3. Payment due on termination by SES LTD pursuant to condition 6.1 shall include: (i) payment for all Services carried out up to and including the date of termination; and (ii) reimbursement to SES LTD of the cost of any commitments entered into by SES LTD on the assumption that it would supply all the Services.
- 5.4. Termination by the Client within 3 days of site work may be subject to a fee amounting to 50% of the agreed total fee.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 6.1. Subject to the following and to clause 2.3 SES LTD will treat as confidential all trade secrets and confidential information received from the Client relating to the Services concerning the Client or its business. SES LTD will not disclose such information to a third party without the prior written consent of the Client. SES LTD may use information obtained while providing the Services for the compilation of statistics.
- 6.2. All information and advice provided by SES LTD to the Client is for the sole use of the Client and shall not be disclosed or made available by the Client to any third party without the prior written consent of SES LTD .
- 6.3. Neither party shall be prevented from disclosing information which: (i) is or becomes public knowledge; (ii) is or becomes known from other sources without restriction on disclosure; (iii) is required to be disclosed by law; or (iv) the recipient party can prove is or has been independently developed by the recipient.
- 6.4. The Client will neither display nor use either the name "SES LTD " or the SES LTD logo nor will the Client disclose to any third party SES LTD ' involvement in the Services without the prior written consent of SES LTD , unless legally required to do so.
- 6.5. All copyright in working papers, reports and other materials produced by SES LTD shall vest in SES LTD , but the Client may circulate copies of such within its own organisation.

7. MISCELLANEOUS

- 7.1. If two or more parties engage SES LTD to supply Services in respect of a particular contract then such parties shall be jointly and severally liable for payment for the Services.
- 7.2. SES LTD will not be liable for any failure or delay in carrying out the Services due to any circumstances beyond its reasonable control.
- 7.3. Any notice by either party shall be deemed to have been properly given if delivered by hand, or sent by first class recorded delivery post to the other party at its address notified in writing, and shall be deemed to have been delivered two working days after the date of posting.
- 7.4. Any condition found to be invalid or unenforceable shall be severed, and the remaining conditions shall continue to be valid and enforceable as if the contract had been agreed without the invalid or unenforceable condition.
- 7.5. The contract to which these terms and conditions apply shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 7.6. Conditions 7 and 8 shall remain enforceable irrespective of termination of the contract or completion of the Services for whatever reason. Termination or completion shall not prejudice the accrued rights or liabilities of either party.
- 7.7. A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any condition of this Contract. This does not affect any right of a third party which exists other than pursuant to that Act.

7.8. FORCE MAJEURE - If SES Ltd is delayed in the performance of the Consultancy Services by circumstances beyond reasonable control, SES Ltd shall give written notice of that fact to the Client and shall be entitled to an extension of any time as is required for the completion of the Consultancy Services.

Soil Environment Services Ltd. Jan 2015.